P.A.C. No. 228

PUBLIC ACCOUNTS COMMITTEE (1968-69)

(FOURTH LOK SABHA)

SEVENTY-SECOND REPORT

[Chapters II and III of Audit Report (Civil) on Revenue Receipts, 1968 relating to Customs and Union Excise.]

LOK SABHA SECRETARIAT
NEW DELHI

April, 1959/Chaitra, 1891 (Saka)

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*Declared elected on the 19th August 1968 *vice* Shri M. M. Dharia resigned from the Committee.

I

INTRODUCTION

I, the Chairman of the Public Accounts Committee, as authorised by the Committee, do present on their behalf this Seventy-Second Report (Fourth Lok Sabha) on Chapters II & III of Audit Report (Civil) on Revenue Receipts, 1968, relating to Customs & Union Excise.

2. The Audit Report (Civil) on Revenue Receipts, 1968 was laid on the Table of the House on the 10th May, 1968. The Committee examined the paragraphs relating to Customs included in the Report at their sitting held on the 2nd August, 1968 (AN) and the paragraphs relating to Union Excise at their sittings held on 7th October (FN & AN) and 8th October, 1968 (FN). The Committee considered and finalised this Report at their sitting held on the 17th April, 1969 (AN). Minutes of these sittings of the Committee form Part II* of the Report.

3. A statement showing the summary of the main conclusions/recommendations of the Committee is appended to the Report Appendix IV. For facility of reference these have been printed in thick type in the body of the Report.

4. The Committee place on record their appreciation of the assistance rendered to them in the examination of these accounts by the Comptroller and Auditor General of India.

5. The Committee would also like to express their thanks to the Officers of the Ministry of Finance for the co-operation extended by them in giving information to the Committee.

NEW DELHI;
April 18, 1969.
Chaitra 28, 1891 (Saka).

M. R. MASANI,
Chairman,
Public Accounts Committee.

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I

CUSTOMS

Customs Receipts

Audit Paragraph

The total receipts from Customs Revenue during the year 1966-67 and for the year 1965-66 are given below:

	1966-67	1965-66
	Rs.	Rs.
(*a*) Customs imports . .	4,79,20,30,873	5,476.9,45,473
(*b*) Customs exports . .	1,22,91,33,435	2,13,96,740
(*c*) Miscellaneous . . .	4,90,69,182	4,90,14,534
Gross Revenue . .	6,07,02,33,490	5,54,73,56,747
Deduct—Refunds and Drawback	21,65,80,160	15,76,83,798
Net Revenue . . .	5,85,36,53,330	5,38,96,72,949

1.2. The bulk of the Customs revenue collected is from imports. As compared to 1965-66 the receipts from imports fell by Rs. 68.49 crores. On the other hand Customs receipts from exports has registered a phenomenal increase of Rs. 120.77 crores over the corresponding figure last year. Refunds and drawback accounted for Rs. 15.76 crores in 1965-66 as against Rs. 21·65 crores in 1966-67.

[Paragraph No. 9, Audit Report (Civil) on Revenue Receipts, 1968].

1.3. In a note, the Department of Revenue have furnished the break-up of the total amount of revenue of Rs. 585.36 crores as follows:

	Rupees in crores
(*i*) Government Departments (Central as well as State) .	57·48
(*ii*) Statutory Corporations and	94·18*
(*iii*) Government Companies	
(*iv*) Private parties	455·96
Total Gross Revenue	607·22
Deduct—Refunds and Drawback	21·66
Total Net Revenue	585·36

(*Separate figures for Statutory Corporations and Government Companies are not available.)

account for about Rs. 4 crores. Also, Bombay Custom House, while forecasting for 1966-67 did not take into account refunds payable to Government Departments by book adjustment through the Accountant General, Maharashtra. Refunds on this account paid during 1966-67 in the Bombay Custom House amounted to Rs. 2.3 crores. Increase of Rs. 1.8 crores in Drawback is due to increase in the rates of drawback due to devaluation on 6-6-1966 and more items having been brought under the Drawback Scheme."

1.6. In a written questionnaire, the Committee had desired to be informed of the action taken by Government on the Report of the Drawback Enquiry Committee presented to Government in November, 1967. In particular, they desired to know the action taken by Government on the following recommendations of the Enquiry Committee:

(a) In the interest of export promotion, grant of drawback should be the rule and the denial thereof the exception.

(b) The procedure in the Customs Houses should be so streamlined that it will be possible to pay the drawback amounts due within two weeks of the delivery of the export manifests by the Steamer Agents.

1.7. In a note furnished to the Committee, the Department of Revenue have stated that Government had taken decision on 58 recommendations. Only two recommendations were pending for final decision.

1.8 As regards the recommendations at (a) and (b) above, the Department have stated that Government had accepted both the recommendations in principle. In regard to (b), they have, however, added, "In respect of cases where full information has not been supplied by the exporter, the period would naturally count from the date the information is supplied."

1.9. The Committee trust that, in the interest of export promotion, Government will give continuous attention to the question of extending the scope of drawbacks. It would also help the cause of export promotion if Government could ensure that the procedures for payments are so streamlined as to make payment of drawback amounts to exporters possible within two weeks of the delivery of export manifests, as suggested by the Drawback Enquiry Committee.

1.10. With a view to arresting leakage of revenue through procedural defects in the matter of assessment, collection or accounting, the Public Accounts Committee in their successive Reports

were found to be not acceptable. As regards recommendation No. 1, the Empowered Committee was of view that the needed improvement in audit could be achieved by inducting a few appraisers at the technical supervisory level. There was no justification for the creation of a new cadre of Selection Grade U.D.Cs. In pursuance of this decision, a scheme for reorganisation has been prepared and will be finalised in consultation with the Department of Expenditure.

1.13. It is nearly five years since the Public Accounts Committee urged Government to strengthen and improve the working of the Internal Audit Organisation. This has not yet been done. The Committee desire that the reorganisation scheme be finalised and implemented without further delay.

Non-levy of countervailing duty

Audit Paragraph

1.14. Ice makers which are ordinarny sold or offered for sale as ready assembled units should on import be charged to countervailing duty under item 29A(1) Central Excise Tariff. The Government of India had ruled in October, 1962, that if a complete refrigeration or cold storage plant is imported in knocked down condition and all that is required to be done is to assemble it *in situ* without addition of any indigenous parts, such a plant would fall under item 29A(1) or (2) for the levy of countervailing duty.

1.15. Component parts and accessories required for the initial setting up of an ice making plant imported through a port in 1963, were assessed to duty under item 72(21) and proviso to item 72(25), Indian Customs Tariff without levying the countervailing duty. The ice making plant which was onlv refrigerating machinery was imported in a knocked down conditon requiring assembly *in situ* without addition of any indigenous parts and thus attracted levy of countervailing duty in terms of Government of India clarification issued in 1962. On this being pointed out the Custom House replied that the ice making plant in question did not fall under item 29(A) of the Central Excise Tariff as it was not one ordinarily sold or offered for sale as an assembled unit. However, demand for Rs. 2.12 lakhs in respect of 6 out of 10 cases of non-levy was issued by the Custom House. The matter of non-levy of countervailing duty on the refrigerating machinery was brought to the notice of the Central Board of Excise and Customs in June 1965 for the issue of suitable instructions. The Ministry have stated in February, 1968 that the general question of levy of

making plant and other refrigerating and air-conditioning machinery attract countervailing duty is under the consideration of Government. As the matter was raised by Audit in June, 1965, the Committee are not able to appreciate why a decision has not yet been taken in the matter. The Committee need hardly stress that Government should issue necessary instructions in the matter in consultation with the Ministry of Law and Comptroller and Auditor General without further delay.

1.20. The Committee note that the Custom House is being asked by the Board in this case to fix responsibility for the omission to circulate certain instructions issued by the Board in October, 1962. They would like to be informed of the action in the matter. The Committee would also like a fool-proof procedure to be evolved whereby important instructions are brought promptly to the notice of all those entrusted with the duty of appraising goods for customs duty.

1.21. Synthetic Organic Dyestuffs (including pigment dyestuffs on import should, in addition to the Customs duty chargeable under the appropriate item of the Customs Tariff, be charged to Central Excise duty also under item 14D Central Excise Tariff.

Pigment dyestuffs, however, are exempt from the payment of Central Excise duty according to a Government of India Notification dated 29th April, 1955. Though pigment dyestuffs are quite distinct from oil and spirit soluble colours, the practice in a Custom House was to treat oil and spirit soluble colours (dyestuffs) as pigment dyestuffs on the basis of the Custom House laboratory reports and not to charge countervailing duty on them. The Laboratory was reporting articles other than dyes as pigment dyestuffs without distinguishing them from oil and spirit soluble dyestuffs.

1.22. The non-levy of countervailing duty on a consignment of 'Methyl Violet Base' (a spirit soluble coal tar dye) imported in April, 1963 was pointed out to the Custom House in May, 1963 and the differential short levy recovered. The Custom House, however, did not charge countervailing duty on several consignments of oil and spirit soluble dyestuffs imported subsequent to April, 1963. When this was pointed out, the Collector justified the non-levy of countervailing duty on the ground of established practice till the Central Board of Excise and Customs issued instructions in March, 1966. The continuance of the practice of not levying

countervailing duty on ice making plants is being considered by them.

[Paragraph No. 12(ii), Audit Report (Civil) on Revenue Receipt 1968.]

1.16. The Committee enquired why the Board's instructions of October, 1962 were not followed by the Custom House. In their reply the Ministry have stated: "The Board's instructions of October, 1962 were not followed by the Appraisers as these were not circulated due to oversight. Collector is being asked to fix responsibility for omission to circulate." The Committee pointed out that Audit had reported the case to the Board as early as June, 1965 for the issue of suitable instructions but a final decision in the matter had not been taken till June, 1968. The Committee have been informed as follows:

> "The Board is of the view that ice making plant and other refrigerating and air-conditioning machinery imported in these instances are not sold or offered for sale as ready assembled units and hence would not attract any countervailing duty on importation. However, this matter has to be discussed with the Ministry of Law and the Audit, before a formal ruling is issued."

1.17. In reply to another question, the Ministry have stated in a note that the demand of Rs. 2.12 lakhs raised in six cases had not yet been recovered, and in the remaining four cases, demands could not be raised on account of time-bar.

1.18. The Committee enquired whether there were other instances of non-levy of countervailing duty since October, 1962. It has been stated in a note that "there is no such case of non-levy of countervailing duty in other customs houses. However, a case of import of 'refrigeration plant' in July, 1963 was noticed in Calcutta and in that case countervailing duty was levied. The party filed an appeal to the Appellate Collector against this assessment of the Customs House who held that the articles were not 'Refrigeration appliances' of the type mentioned under item 29A(1) of the Central Excise Tariff. As such, the appeal was admitted by him and a refund of duty amounting to Rs. 63,619 was granted to the party."

1.19. The Committee note that demands amounting to Rs. 2.12 lakhs raised in six cases towards countervailing duty on components and accessories of an ice-making plant have not yet been recovered. In four other cases demands could not be raised due to limitation. The Committee note that the question whether ice-

countervailing duty on spirit and oil soluble colours till March, 1966 has led to loss of revenue, the exact quantum of which has not been intimated to audit by the Custom House. In the cases specifically noticed by audit the amount came to Rs. 10,122.

[Paragraph No. 12(iii), Audit Report (Civil) on Revenue Receipts, 1968.]

1.23. According to a note furnished by the Ministry, non-levy of countervailing duty on oil and spirit soluble dyestuffs was "due to a mistake in proper reasoning—a mistake in interpretation and was not an act of omission." As to the circumstances in which the mistake had occurred, it has been stated in the Collector of Customs, Calcutta's letter dated the 3rd March, 1966 addressed to the Board as follows:

> "The established practice of this Custom House has been to treat oil and spirit soluble colours (dyestuffs) as pigment dyestuffs, which are exempted from Central Excise duty, because of the Custom House Laboratory's reports. Before the Central Excise duty on dyestuffs was levied in 1961, the only question for determination by the laboratory was whether the imported goods were dyes under Customs tariff item 30(1) or not. The laboratory used to make a solution of the imported goods in water and used to test whether the solution could dye textiles. Whenever the imported goods were soluble in water and could dye the textiles, they were reported as dyes. Where this was not so, the laboratory used to report 'these may be considered as pigment dyestuffs' without testing solubility in spirit because there was no need to distinguish between 'pigment dyestuffs' and 'oil and spirit soluble colours (dyestuffs)' both of which were, as per Board's rulings, reproduced at page 377 of I.C.T.C. assessable under item 30 of the Customs Tariff. Thereupon the Appraising Department used to assess these under item 30. When the Central Excise duty was introduced, the laboratory continued its earlier practice of reporting articles other than dyes as pigment dyestuffs without distinguishing them from oil and spirit soluble dyestuffs and since pigment dyestuffs were exempted from Central Excise duty, the Appraising Department exempted them from countervailing duty. Deputy Chief Chemist has now pointed out that oil and

spirit soluble colours (dyestuffs) are quite distinct from pigment dyestuffs. The latter are insoluble and are listed separately in the Colour Index."

1.24. As regards the number of Audit objections raised in this case, the Ministry have stated in their note that besides the eight objections, involving an amount of Rs. 11,231, raised by Revenue Audit, nine objections, involving an amount of Rs. 24,669 were raised by the Internal Audit Department of the Custom House during the period May, 1963 to March, 1966. Demands amounting to Rs. 1,412.50 were raised in respect of only two cases pointed out by the Revenue Audit. No demand in respect of any other case pointed out by the Revenue Audit/Internal Audit was raised. Of the total demand of Rs. 1,412.50 raised by the Custom House, only Rs. 875 had been realised.

1.25. As to the action taken by the Custom House on the audit notes pointing out the instances of non-levy of the countervailing duty, the Ministry have stated: "In all these cases, the objections were not admitted by the Custom House on merits. The issue involved was being examined in consultation with the local Deputy Chief Chemist and also with the other Custom Houses. Ultimately, the Collector in early 1966 decided that the practice of non-levy of countervailing duty in respect of spirit and oil soluble coal tar colours was not in conformity with the law and the position was brought by him to the notice of the Board, seeking approval for the change of practice. The approval was granted by the Board in March, 1966."

1.26. As to the legal authority or basis for making assessments on the basis of 'established practice', the Ministry have stated: "The basis for not giving retrospective effect to Board's rulings in respect of 'established practices' is the executive instructions issued by the Government in 1924. These instructions were issued on the consideration that if any excess duty is demanded on the basis of such a ruling this might throw unmerited financial burden on the importers, as they would have by that time disposed of the goods and would have no means to recover the additional duty from the buyers of the goods. Though no formal exemption notification was issued the legal authority for these instructions is the power vested in the Government under Section 23 of the Sea Customs Act, 1878 as well as under Section 25 of the Customs Act, 1962, to grant exemption from payment of duty. The question of issuing a formal notification is under the consideration of the Government."

1.27. On another point whether Government have reviewed all 'established practices' to see that they are not inconsistent with the provision of the customs law or the Tariff, the Ministry have replied as follows:

> "It is incumbent on all the assessing officers to assess the goods at the rates prescribed by law. If in any particular case the assessing officer feels that the established practice of assessment is not in accordance with the law it becomes his duty to bring this to the notice of the higher officials so as to decide whether the established practice needs a change or not. In case of doubt, Collectors bring the matter to Board's notice for a ruling. This a regular and continuing process and erroneous practices are thus brought to light either by the assessing officers, or by the Audit or even by the trade in cases where the established practice is against the trade. In the light of what is explained above, there is a continuous review of established practices as and when the concerned goods are assessed by the assessing officers or their assessments are audited by Internal Audit or C.R.A. This position is being reiterated."

1.28. The Committee are distressed at the manner in which the Calcutta Custom House acted in this case. During the period May, 1963 to March, 1966, Audit pointed out no less than 17 times that the practice of non-levy of countervailing duty on spirit and oil soluble coal tar colours was not in conformity with the law. The Custom House, however, persisted in the non-levy of the countervailing duty on the ground that this was the 'established practice'. It is unfortunate that this 'established practice' continued till March, 1966 when the Collector decided that it was not in conformity with the law. Revenue to the tune of Rs. 35,000 was in the meanwhile lost.

1.29. It is hardly necessary for the Committee to say that every 'established practice', whatever its basis, has to be in conformity with the law, and should cease as soon as it becomes inconsistent with any legal provision. The Committee note that suitable instructions in the matter have been issued by the Ministry of Finance to the Collectors of Customs. They trust that the Board will ensure that these instructions are strictly complied with.

Assessment at rates lower than those prescribed

Audit Paragraph

1.30. According to an exemption notification dated 13th June, 1962 of the Government of India, all telecommunication wires and cables falling under item 33B(i) Central Excise Tariff are assessable to Central Excise duty at 5 per cent *ad valorem*. In a circular letter issued in December, 1964 the Government of India had specifically stated that the said concessional rate of 5 per cent was intended to apply to only such telecommunication wires and cables as are capable of and are actually used for telecommunication purposes to the exclusion of other possible uses such as domestic flexible wiring, etc. Accordingly, housing wires and cables used for internal telecommunication connections are to be charged at the standard rate.

1.31. In a Custom House imported wires and cables were being charged to additional customs duty at the concessional rate of 5 per cent without verifying whether the cables were in fact eligible for the concession in terms of the Government of India circular letter of December, 1964. The extent of the concession so granted in the cases come across works out to Rs. 1,19,100. In the same Custom House, switch board wires, in respect of which the concessional rate was not applicable, were also assessed to duty at 5 per cent *ad valorem* resulting in a short levy of Rs. 55,500.

1.32. The Ministry while confirming the short levy of additional Customs duty have stated that the Board's circular of December, 1964 was not endorsed to the Collector of Customs and necessary instructions have since been issued to ensure that copies of all orders on the Central Excise side were also sent to the Collectors of Customs.

[Paragraph No. 13, Audit Report (Civil) on Revenue Receipts, 1968].

1.33. In a note furnished to the Committee, the Ministry have stated that the Board's circular of December, 1964 was printed in the C.B.R. Bulletin, Central Excise (Technical) for the quarter October—December, 1964. On account of some delay in printing, a copy of the Bulletin was received by the Custom House in July, 1965.

1.34. The Ministry have further stated that a sum amounting to Rs. 29,939.39 paise had so far been recovered. Demands amounting to Rs. 1,42,650.22 paise in 49 cases had become time-barred. Requests for voluntary payments had, however, been made in these cases.

1.35. In reply to a question as to how an important circular of Government laying down the scope of relief under an exemption notification was not endorsed to the different Custom Houses, the Ministry have stated as follows:

> "It has been the practice in the Central Excise Wing of the Board to endorse copies of the all Central Excise instructions having a bearing on the levy of countervailing duty on imported goods to the Collectors of Customs. In this particular case copies were not so endorsed through oversight. The explanation of the officer concerned in the Central Excise Wing was called for. On being satisfied after necessary enquiry that it has been a stray instance of this kind of lapse on the part of the officer who is otherwise a conscientious and devoted worker, the matter has been dropped after cautioning him suitably."

1.36. As to the remedial measures taken or proposed to be taken to obviate the recurrence of such omissions, the Ministry have stated as follows:

> "The practice was, and even now is, to send copies of circulars, notifications etc. which have a bearing on the levy of countervailing duty also to all Collectors of Customs. When the omission in this particular stray instance came to light, instructions were re-issued to all Sections in the Central Excise Wing impressing on the Branch and Section Officers concerned the need to ensure compliance strictly with the requirements of endorsing copies to the Collectors of Customs whenever circulars/notifications of the aforesaid nature were issued by the Central Excise Wing."

1.37. The Committee regret that, due to failure on the part of the Board to endorse copies of certain instructions, cables, wires and other equipment intended for non-telecommunication purposes were wrongly assessed at concessional rates, entailing a loss of revenue to the tune of Rs. 1.43 lakhs. This amount could not be recovered due to limitation. The Committee note that instructions have been issued by the Board to all Branches and Section Officers of the Central Excise Wing to ensure that copies of circulars/notifications having a bearing on the levy of countervailing duty are sent to all Customs Houses. The Committee trust that these instructions will be strictly complied with.

The Committee note that requests for voluntary payment of duty have been made by the Customs House in respect of time-barred claims in this case. They would like to be informed of the outcome of the efforts made by the Customs House in this regard.

13

Excess levy of Customs Duty

Audit Paragraph

1.38. The Central Board of Excise and Customs have clarified from time to time that Crawler-mounted cranes and other equipments like loaders, excavators having limited manoeuverability are assessable as machinery under item 72 Indian Customs Tariff and not as conveyances under item 75 Indian Customs Tariff.

1.39. It was, however, noticed that Crawler-mounted cranes imported in November, 1964 were assessed by a Custom House as conveyances under item 75 Indian Customs Tariff together with additional duty under item 34 Central Excise Tariff. The claim of the importer for reassessment of the goods as machinery was rejected as unsubstantiated. The Appellate Collector of Customs also, ordered on an appeal filed on the above assessment, that the Crawler-mounted cranes were assessable as conveyances but, at a concessional rate under foot note (2) to item 75 of the Customs Tariff together with the additional duty under item 34 Central Excise Tariff.

1.40. When the attention of the Custom House was drawn to the Board's orders on the subject, the Custom House, while admitting the objection, replied that the excess levy could not be refunded except on a revision petition against the order in appeal. As a result, the sum of Rs. 73,905 collected in excess has not been refunded to the importer.

[Paragraph No. 15(ii), Audit Report (Civil) on Revenue Receipts, 1968].

1.41. During evidence, the representative of the Central Board of Excise and Customs stated that in terms of the Board's Ruling issued in February, 1963, the relevant catalogue was to be checked to determine whether a crane was to be assessed as machinery or a conveyance. If a crane was designed for carrying (besides lifting), it was to be assessed as a conveyance, but if it was designed for a purpose other than carrying, it was to be assessed as machinery. He admitted that in the present case, the crane should have been assessed as a conveyance, he explained that the importer was not in a position to produce the catalogue from which the design of the crane could be studied. He, therefore, agreed to pay duty at a higher rate and claim refund later on. In reply to a question the witness stated that "the mistake is at the appellate stage. The appellate collector wrongly rejected the appeal."

on 27th January, 1968 (ii) a sum of Rs. 45,419·25 has already been paid as rent to the garage owner and a further sum of Rs. 28,640 is pending payment and (iii) the vehicles lying in the Custom House have since been removed to a godown recently hired.

[Paragraph No. 16(i), Audit Report (Civil) on Revenue Receipt 1968]

1.49. In a note furnished to the Committee, the Ministry have stated:

"The monthly rent payable for storage of motor vehicles to the private garage owner was at the rate of Rs. 40 per car and Rs. 50 per truck or bus according to the original arrangement with them in 1961. From 1965 the private garage owner had been asking for a higher rent of Rs. 100 and Rs. 120 per car and truck respectively due to allround rise in rents. Bombay Custom House tried to make alternative arrangements but none were available. Ultimately, the Custom House removed these vehicles and placed them in the Custom House compound pending new garaging arrangements. Meanwhile the management of the garage had changed hands and negotiations took place between the new management and the Custom House. After considerable persuasion and personal pressure, they agreed to a rental of Rs. 75 per car and Rs. 100 per truck per month with effect from March, 1966 although their original demand was Rs. 100 per month per car and Rs. 120 per truck which they were already charging from other customers. The enhanced rates of Rs. 75 per car and Rs. 100 per truck per month were lower than the market rates. The total amount of rent paid to the garage owner at the enhanced rate was Rs. 36,040 for the period from 1st March, 1966 to 31st January, 1968. The difference between the rent payable at the old rates and at the revised rates for the period from 1st March, 1966 to 31st January, 1968 works out to Rs. 17,595."

1.50. During evidence, the Committee desired to know whether the Custom House had entered into an agreement with the private garage owner regarding the garaging of vehicles and if so what the terms were. The representative of the Board stated that both the parties had mutually agreed that if, at any time, either party wanted the rent to be revised, it was to take the consent of the other party. It was also agreed that if the Custom House felt that the rent which the garage owner wanted to charge was excessive, they had the option to withdraw their vehicles. The agreement was, however, not reduced to writing.

1.51. As to the latest position, the Finance Secretary stated that the Custom House had settled their dispute with the garage owner in January, 1968 and removed their vehicles from the garage. They had now garaged their vehicles at a site near Mazagon Docks and were paying rent to the new garage owner at the rate of Rs. 107 per car and Rs. 150 per truck per month. The rent paid by the Custom House to the former garage owner during the last two years was much lower--Rs. 75 per car and Rs. 100 per truck.

1.52. As regards the two cars the release of which could not be secured from the garage owner, the Committee enquired whether these had since been disposed of. The representative of the Board replied in the affirmative.

1.53. From a note furnished by the Ministry, the Committee observe that the highest bids for these cars in the auction held on the 31st January, 1967 were Rs. 23,000 and Rs. 21,000. These were disposed of on the 6th June, 1968 for Rs. 18,200 and Rs. 19,000 respectively, the aggregate difference between the highest bids and actual realisations being Rs. 6,800.

1.54. The Committee desired to know the arrangements for the proper upkeep of seized confiscated vehicles. The representative of the Board stated that they had issued instructions to the effect that, besides garaging charges, officers could spend upto Rs. 20 per month on maintenance and upkeep of cars. Further, the drivers and mechanics in the employ of Custom Houses regularly looked after the vehicles. In case there was any major defect, the vehicle was taken to the nearest garage for repairs. From a note furnished by the Ministry, the Committee observe that pursuant to the recommendation of the Public Accounts Committee (1967-68) contained in para 1.45 of their 24th Report (Fourth Lok Sabha), instructions have been issued to Custom Houses to make appropriate arrangements for protecting the seized confiscated vehicles from deterioration due to inclemencies of weather and thefts. In reply to a question, the witness stated that instructions for the proper upkeep of vehicles were in force even previously, but when it came to notice that some cars had not been properly looked after, the instructions were reiterated.

1.55. Asked whether any log books were required to be maintained in respect of seized vehicles, the representative of the Board stated that as these were not being used, no log book was maintained. Further asked whether it would not be desirable to maintain a log book to indicate that the vehicle had been used only for the purpose of keeping it in good gear, the witness stated: "That will be done."

1.56. The Committee enquired whether officers of the Customs Department used the seized vehicles. The representative of the Board stated: "It is not normally done. But in exceptional and rare cases, it is permitted." The use was only for Departmental purposes, such as, anti-smuggling work. No officer used the vehicles for his own purposes. The Committee desired to know the legal authority under which seized vehicles could be used for Departmental purposes. The witness stated: "The only legal thing is that he can ask for compensation for the mileage that the car has covered and the Department in such situations is quite prepared to pay." From information since furnished to the Committee, it is seen that one seized vehicle in the Bombay Custom House "is being used under Collector's orders and one vehicle in Madras Customs House was used for a few days in connection with official work.

1.57. The Committee desired to know the latest position regarding disposal of seized cars. The representative of the Board stated that out of 89 motor vehicles (seized between 1962 and 1967), 47 had been sold, leaving a balance of 42. Cases in respect of some of them were pending in courts or were under adjudication. Only 14 vehicles had been finally confiscated and were pending disposal. The Committee enquired about the 8 vehicles which had not been disposed of till February, 1968, even though adjudication in respect thereof had been completed. The representatives of the Board stated that all the eight vehicles had since been disposed of.

1.58. The Committee have been given information about vehicles seized since December, 1966 which were in the custody of Custom Houses as on 1st September, 1968. From the data furnished the following position emerges:

(*i*) No. of seized vehicles with the Customs Houses	201
(*ii*) No. in respect of which adjudication is in progress	117
(*iii*) No. to be auctioned	11
(*iv*) No. released on bond/bail or for other reasons	3
(*v*) No. to be released to the party	2
(*vi*) No. released/reshipped on payment of redemption/fine or for other reasons	12
(*vii*) No. in respect of which court cases or appeals are pending	6
(*viii*) No. appropriated for departmental use	Nil
(*ix*) No. sold by auction	4
(*x*) No. not ripe for disposal	3

It is further observed that 20 cars in respect of which adjudication proceedings were in progress as on 1st September, 1968, were seized prior to September, 1967.

1.59. The Committee were informed by Audit that on 1-1-1965, the Board had issued the following instructions regarding finalisation of Adjudication proceedings:

> "Where the order of confiscation mentions fine in lieu of confiscation or of re-shipment, the period allowed should be only upto 30 days (and not 4 months as is the usual practice for ordinary goods). If the party does not clear the motor vehicle or the vessel by paying the fine in lieu of confiscation, a final notice of a week or ten days should be given to him, after which the goods should be disposed of. Every attempt should be made to finalise the confiscation proceedings for motor vehicles and vessels within one month."

1.60. The Committee desired to know whether the Department were able to finalise the confiscation proceedings regarding motor vehicles and vessels within one month. The representative of the Board stated: "In complicated cases, the time-limit for adjudication mentioned in the instructions is certainly too little" and "is unreal". In reply to a question, he stated that in complicated cases, the time-limit was found to be unreal from the very beginning. If so, the Committee enquired why these instructions were not revised. The Finance Secretary stated: "It seems these instructions of 1965 January have already been modified by the instructions issued on the 15th April, 1968 which quote a Supreme Court's ruling of July, 1967 and caution the officers that since the property is liable to be returned, it should not be disposed of before the appeal or revision has been decided, unless the goods are of a perishable nature. The previous one gave the officers latitude to dispose of the goods as soon as adjudication was completed."

1.61. The Committee desired to know the views of the Ministry regarding the desirability of indicating a time-limit for adjudication in the statute itself with a provision for extension in deserving cases. The Finance Secretary stated: "I am afraid that this will not work. What has happened in respect of most of these vehicles is that certain contraband goods were seized which were being carried in these vehicles. Proceedings have to be finalised in respect of these goods before some decision can be taken in respect of the carrier ..... Since we would have no means of compelling the courts to decide the cases by certain dates, because the parties may

not be ready, they may be wanting time and so on, it will militate against the principles of justice." He further stated: "..... The cases in which time will have to be extended on valid grounds will be far more than others which could be disposed of within the fixed time. Thus the purpose of fixing the time-limit will not have been served".

1.62. In para 1.44 of their 24th Report (Fourth Lok Sabha), the Public Accounts Committee (1967-68) had observed as follows:

> "The Committee consider that, as the State Trading Corporation have gathered some experience in handling auction of imported cars, the Board of Excise and Customs may canalise the disposal of confiscated cars through the corporation so as to get the maximum return."

1.63. During evidence, the Committee desired to know the action taken by Government on the above recommendation. The representative of the Board stated that they had written to the Corporation in this regard. A few days back they had indicated the terms on which they were prepared to dispose of confiscated cars.

1.64. From copies of correspondence between the Department of Revenue and the State Trading Corporation, the Committee observe that the Department of Revenue addressed the State Trading Corporation on 28th November 1967 enquiring whether they could take over the confiscated cars (approximately 115) for disposal to the best advantage of Government and if so, on what terms. During the period January—July, 1968, the Department reminded the Corporation four times—on 19th January 1968, 13th March, 1968, 17th April, 1968 and 10th July, 1968. The Corporation sent a reply on the 24th July, 1968 as follows:

> "We are agreeable to your suggestion of the disposal of these cars through the State Trading Corporation subject to the condition that the vehicles shall be sold by the Corporation on behalf of the Customs House on 'as is where is' basis and the Corporation shall charge 2-1/2 per cent of the sale proceeds as service charges in addition to the expenditure that is incurred on the storage of the vehicles during the interregnum. In case the custom authorities are not able to effect delivery of any vehicle at any of our 4 main offices at Delhi, Bombay, Calcutta and Madras the State Trading Corporation shall include such vehicles in its usual tender notice specifying the site where the vehicles are parked in distance mofussil areas and the

documentation for sale and delivery shall be completed by the customs authorities themselves on behalf of the State Trading Corporation."

1.65. During evidence, the Committee desired to know when the matter was expected to be finalised. The Finance Secretary stated: "It should get finalised depending on what the State Trading Corporation have been demanding. I am informed that the terms of the State Trading Corporation were quite onerous and scaling down of these terms was necessary.....I will certainly try and see that this issue gets decided very soon."

1.66. The Committee enquired about the position in regard to disposal of launches seized by Custom Houses. The position in this regard as explained in a note is tabulated below:

(i)	Total No. of launches seized	55
(ii)	No. to be auctioned	6
(iii)	No. under appeal or court cases	9
(iv)	No. for departmental use	10
(v)	No. of launches sold	2
(vi)	No. redeemed by fine	2
(vii)	No. under adjudication	26

1.67. The Committee consider it regrettable that some of the seized vehicles should have been garaged with a garage owner without entering into a written agreement for this purpose. When a dispute arose with the garage owner about the rent to be paid for garaging, the garage owner refused to release the cars, two of which had been auctioned in the meanwhile. As a result, the Custom House was not able to hand over possession of those cars to the bidders. When the cars were subsequently sold after the settlement of the dispute, they fetched Rs. 6,800 less.

1.68. The Committee note that instructions have now been issued by the Ministry impressing upon the Custom Houses the need to enter into written agreements for the garaging of vehicles. The Committee trust that these instructions will be strictly complied with.

1.69. The Committee note from the information furnished to them that of 201 cars seized by the various Customs Houses, adjudication proceedings are in progress in respect of 117 cars. The Committee find that adjudication proceedings in respect of 20 cars have been in progress for a year or more. In the case of launches, adjudication

proceedings are in progress in respect of 26 out of 55 launches which were seized in different Custom Houses. The Committee would like Government to examine how best the proceedings could be speeded up. The Committee would also like action to be taken expeditiously for the disposal of 14 cars and 6 launches which are awaiting auction. Instructions should also be issued to the Customs Houses to ensure that the auction takes place soon after the confiscation proceedings are completed and the time allowed to parties for initiating legal proceedings expires.

1.70. Another point that the Committee notice is that 43 of these seized cars have been released to parties on bail or execution of a bond. The Committee would also like it to be examined whether other seized vehicles in the custody of Customs Houses could be released to the parties, pending finalisation of legal proceedings, subject of course to Government's interests being adequately protected. This might help to minimise problems now faced by the Customs Houses in the matter of the maintenance and upkeep of such vehicles.

1.71. The Committee would like to emphasise the need for the proper upkeep of seized vehicles while in the custody of Custom Houses. Apart from the fact that a properly maintained vehicle would fetch a better price, the Committee would like to point out that in some cases seized vehicles may have to be restored to the original owners. In such an eventuality, the Department is under an obligation to return the vehicle to the owner in the same condition in which it was seized, or, in the alternative, pay its value. The Committee note that pursuant to the recommendations of the Public Accounts Committee (1967-68) contained in para 1.45 of their 24th Report (Fourth Lok Sabha), instructions have again been issued by the Ministry to the Custom Houses to make appropriate arrangements for protecting the seized confiscated vehicles from deterioration due to inclemencies of weather. The Committee trust that these instructions will be strictly complied with by the Customs Houses.

1.72. The Committee notice from the information furnished by Government that in some cases seized cars were used for departmental purposes. The Committee consider this procedure to be fraught with risk. Any damage or accident to the car resulting from such use would put Government in an embarrassing position *vis-a-vis* the parties concerned, if, either as a result of adjudication or appeal, the Department is obliged to restore ownership of the car. The Committee would like Government to examine the matter further and issue suitable instructions.

1.73. The Committee are disappointed that an undertaking like the State Trading Corporation should have taken eight months to reply

to the Department of Revenue's suggestion for the disposal of confiscated cars through their agency. The Committee note the Finance Ministry's view that the Corporation's terms for disposal are onerous and need to be scaled down. The Committee are keen that the matter should be settled at an early date so that confiscated vehicles can be disposed of expeditiously and to the best advantage of Government.

Arrears of Customs duty

Audit Paragraph

1.74. The total amount of customs duty upto 31st March, 1967, remaining unrealised as on 31st October, 1967, was Rs. 71.01 lakhs as against Rs. 108.50 lakhs for the corresponding period in the previous year. Out of the sum of Rs. 71.01 lakhs, Rs. 36.55 lakhs have been outstanding for more than one year.

[Paragraph No. 17, Audit Report (Civil) on Revenue Receipts, 1968]

1.75. In a note furnished to the Committee, the Ministry have given the following year-wise break-up of the outstandings of Rs. 71.52 lakhs:

Year	Amount
	Rs.
1954-55	981·75
1955-56	..
1956-57	2,93,640·37
1957-58	7,572·54
1958-59	144·13
1959-60	319·55
1960-61	48,307·45
1961-62	80,242·38
1962-63	2,92,108·45
1963-64	2,80,661·90
1964-65	6,58,477·76
1965-66	19,71,327·45
1966-67	35,18,179·40
TOTAL	71,51,963·13

1.76. According to another note furnished by the Ministry, the names of the Collectorates/Custom Houses where amounts exceeding Rs. 5 lakhs were pending recovery are as follows:

(Rs. lakhs)

Collectorate/Custom House	Amount of duty pending recovery
1. Collectorate of Central Excise, Madras	11·96
2. Collectorate of Central Excise, Delhi	20·53
3. Calcutta Custom House	10·14
4. Cochin Custom House	5·22

1.77. From a perusal of the Ministry's note, the Committee observe that out of the total outstandings of Rs. 20.53 lakhs in the Collectorate of Central Excise, Delhi, a sum of Rs. 9.07 lakhs was due from certain Government Departments and public sector undertakings which had cleared their imports under the 'Note-pass' procedure. A part of it was pending recovery for over five years. An amount of Rs. 8.52 lakhs was due from the Indian Institute of Technology, Kanpur. This liability had arisen due to non-production of certain certificates on the strength of which free entry could be upheld. The Institute had deputed an officer for early finalisation of the cases with the customs authorities concerned.

1.78. Of the outstandings of Rs. 11.96 lakhs in the Collectorate of Central Excise, Madras, a sum of Rs. 2.16 lakhs was due from the Indian Airlines Corporation on account of the duty leviable on aviation fuel and lubricating oil left in the tanks of aircraft on their reversion to internal flights on the Colombo Trichy route. The Corporation had disputed the correctness of the amount claimed by the Customs Department on the ground that it had not been worked out entirely on the basis of actual records and they also made a counter claim for Rs. 1.90 lakhs for payment to them as drawback for the period 1st August, 1953 to 19th August, 1956. Bulk of other outstandings in this Collectorate as also in the Calcutta and Cochin Custom Houses were on account of disputes pending in courts of law.

1.79. As regards the steps taken to recover arrears, the Ministry have stated as follows:

"Except in the cases where the amounts are not paid under stay orders issued by the appellate authorities or Courts of Law, pending decision of the appeals etc., matter is pursued with the defaulters to pay up the duty in arrears. In some baggage cases the nearest

Central Excise/Customs Officers are instructed to contact the parties concerned to expedite recovery. Where such action proved to be fruitless, the following action is taken depending on the merits of each case:

(i) Any money owing to the party by the Customs Department is deducted for adjustment against the outstanding demand.

(ii) Detention and sale of goods under the control of the Customs Department is resorted to if the owner fails to pay the duty.

(iii) Where the measures mentioned at (i) and (ii) above do not prove successful, certificates specifying the amounts due from the party concerned are sent to the Collector of the district in which the party owns any property or resides or carries on business and the said Collector, on receipt of such certificates proceeds to recover the specified amount as if it were an arrear of land revenue.

(iv) A close watch on the progress of collections is also maintained through periodical statements received from the Customs formations."

1.80. The Committee are glad that the arrears of customs duty have been brought down from Rs. 108.50 lakhs as on 31st October, 1966 to Rs. 71.52 lakhs as on 31st October, 1967. The Committee would, however, like to point out that arrears pending for more than a year accounted for more than 50 per cent of the aggregate arrears as on 31st October 1967. The Committee desire that vigorous steps be taken to liquidate these outstandings.

1.81. The Committee also note that out of the total outstandings of Rs. 20.53 lakhs in the Collectorate of Central Excise, Delhi, a sum of Rs. 9 lakhs was due from certain Government Departments or public sector undertakings such had cleared their imports under the 'Note-pass' procedure. A part of it has been pending recovery for over five years. The Committee need hardly point out that Government Departments and public sector undertakings clearing their imports under the 'Note-pass' procedure owe a special responsibility for the expeditious settlement of customs dues. The Committee trust that the Departments and undertakings concerned will clear the outstandings without further delay. The Committee would like to watch the position through future Audit Reports.

II

UNION EXCISE

Loss of Revenue due to defective wording of demand notice

Audit Paragraph

2.1. Under the notifications issued by the Government of India in March, 1959 concession in duty to the extent of Rs. 1.54 per kg. (basic and additional) was given in respect of 'rawa' of flue cured tobacco not actually used for the manufacture of biris.

2.2. In one Collectorate, 'rawa' of tobacco cleared from 8th July, 1959 to 28th November, 1959 by a licensee, although described in the clearance documents as intended for use in the manufacture of biris, was incorrectly assessed at the concessional rates instead of at the tariff rates, resulting in short levy of duty of Rs. 14,279. Realising the error, the Dy. Superintendent of the range issued a demand notice for the differential duty under Rule 10-A of the Central Excise Rules on 15th February, 1960, on which date a part of the demand viz. Rs. 2,612 was enforceable under Rule 10 of Central Excise Rules itself. The licensee protested on 22nd February, 1960, against the demand on the ground that it was time-barred under Rule 10 *ibid*. A revised notice was issued on 17th June, 1961 under Rule 10 *ibid* for Rs. 8,441 covering the clearances during a period of 3 months prior to 1st February, 1960; but it was mentioned in the notice that it was in continuation of an earlier notice of 1st February, 1960, although no notice had been issued on the said date. The party filed a suit against the demand in the High Court and the Court decided in February, 1966 that the reference to a non-existent demand notice rendered the revised demand issued in June, 1961 invalid. Out of the total amount of Rs. 14,279, a sum of Rs. 5,838 was time-barred by the time the incorrect assessment was discovered and the balance of Rs. 8,441 could not also be recovered, due to non-issue of the demand notice of 1st February, 1960 and defective wording of the demand notice of 15th February, 1960.

[Paragraph No. 23(i), Audit Report (Civil) on Revenue Receipts, 1968]

2.3. The Committee were supplied with a copy of the judgement of the High Court on the case. The judgement recounts the circumstances leading to the dispute about the demand raised by the Excise Department in the following terms:

"On six different dates, namely, July 8, 1959, July 20, 1959, September 12, 1959, November 4, 1959, November 9, 1959 and November 28, 1959, the petitioner firm removed certain quantities of Rava tobacco from their warehouse and the excise officer on all these occasions assessed the petitioner firm to excise duty at the rate of forty-seven naye paise per lb. At the time of those removals, the petitioners firm had declared in the AR-I forms which it had to lodge that the aforesaid tobacco was intended to be used for manufacture of *bidis*. The rate of forty-seven naye paise per lb. was applied to the aforesaid tobacco presumably on the basis of the notification dated March 1, 1959 issued by the Ministry of Finance which superseded the earlier notification dated March 1, 1958 and which exempted certain types of flue cured tobacco set out in the notification 'not actually used for the manufacture of (a) cigarettes of (b) smoking mixtures for pipes, cigarettes of (c) biris from so much of the duty leviable thereon under section 3 of the Central Excise and Salt Act, 1944, (1 of 1944) as is in excess of forty-seven naye paise per pound.' Amongst the types of the flue cured tobacco so exempted was '*Rava*' of tobacco capable of passing through a seive made with not finer than 24 S.W.G.O. 022 inch diameter and containing not less than 18 uniform circular or square apertures per linear inch. It appears that subsequently the Deputy Superintendent Central Excises, Chikhodra felt that the proper duty leviable upon the said tobacco was at the rate of Rs. 1.20 np. per lb. and therefore acting under 10(A) he issued a notice dated February 15, 1960 demanding payment of a sum of Rs. 14.278.67 np., annexing a schedule thereto. The schedule shows that the aforesaid amount of Rs. 14,278.67 np. was the difference between the rate at which the said tobacco was actually charged and the rate which according to the Deputy Superintendent sought to have been charged by the department at the time of the aforesaid six removals. By its reply dated February 22, 1960 the petitioner firm protested against the aforesaid demand and pointed out that the claim made by the department was outside the scope of rule 10(A) and further that the aforesaid rule 10(A) was invoked by the officer to save the said demand from being time-barred, knowing that such a demand would fall within the ambit of rule 10 but that if rule 10 were to be applied the demand would be time-barred, as such demand was made very much after the expiry of three months from the date of payment of duty. On March 4, 1960 the officer replied that rule 10(A) was clear and was applicable where a differential duty was

demanded on account of a short levy of duty and that the aforesaid notice of demand dated February 15, 1960 was, therefore, proper. The petitioner firm again protested against the aforesaid demand by its letter dated March 14, 1960, stating that under the aforesaid notification the deparment could charge excise duty at the rate of forty-seven naye paise only as there was nothing to show that the tobacco in question was actually used in the manufacture of *bidis* and therefore the claim for the differential duty was not proper. The firm repeated its contention that rule 10(A) was not applicable and consequently the demand made by the said notice dated February 15, 1960 was improper. Nothing seems to have happened thereafter for nearly a year and three months. By a notice dated June 17, 1961, the Deputy Superintendent, Chikhodra made a demand for the differential duty of Rs. 8,440.56 np., restricting this time the claim for the difference to the removal dated November 4, 1959, November 9, 1959 and November 28, 1959 and stating that the notice was issued by him under rule 10 and not rule 10(A) of the aforesaid rules. The notice dated June 17. 1961 referred to 'this office No. 287 of 1959 dated 1-2-60' and also stated that the demand was made 'in continuation of this office number cited above'. By its reply dated June 21, 1961 the petitioner firm at once pointed out that no such letter bearing number 287 of 1959 dated February 1, 1960 was ever served upon the petitioner firm and that therefore there was no question of the letter dated June 17, 1961 being in continuation of such a letter."

2.4. From the judgment, the Committee observe that Government's counsel put in a plea before the court that the demand notice dated 17th June, 1961 was not an independent demand but "that notice was in continuation of the action taken under the earlier notice dated February 15, 1960."

The court decided the case in favour of the party for the following reasons:

(i) The notice dated 17-6-1961 was independent and "had nothing to do with the earlier notice of February 15, 1960" because the earlier notice was under Rule 10(A), whereas the later notice was under Rule 10, the decision to issue the notice under Rule 10, having been taken by the Assistant Collector in view of objections raised by the party to the application of Rule 10A.

(ii) The notice dated 17th June, 1961 "also cannot be treated as one in continuation of an earlier notice of February 1, 1960 as such a notice was never clearly served on the

petitioner firm. Though there was prolonged correspondence between the petitioner firm and the department and though the department filed an affidavit in reply to the petition, the denial by the petitioner firm in regard to the alleged letter dated February 1, 1960 was never challenged and even at the time of the hearing the department was not in a position to assert that such a letter had been served upon the petitioner firm or to produce a copy of such a letter. Obviously therefore, such a letter could not have been issued to the petitioner firm and the denial by the petitioner firm must be taken to be a correct denial and therefore the notice dated June 17, 1961 cannot be regarded as action taken in continuation of any such letter dated February 1, 1960 and bearing No. 287 of 1959.

(iii) Since the notice dated 17th June, 1961 was related neither to the notice dated 15th February, 1960 nor to the notice dated 1st February, 1960 and was attracted by limitation, the demand raised on the party was "without jurisdiction and therefore invalid."

2.5. During evidence, the representative of the Board stated: "This is an unfortunate case where there has been a lapse. It was brought to the notice of the concerned range officer by the Superintendent. The officer did give notice but it was not in proper form. Subsequently, within a few days, he issued the demand but it was again issued under a wrong rule. Then the party entered into some protracted correspondence and we subsequently issued the notice under the correct rule but, by that time, it had become time-barred." The Finance Secretary added: "Even though the amount involved is small, it is a somewhat serious matter that the provisions of the rule should have been utterly misread and misinterpreted at the level of the Deputy Superintendent."

2.6. The Committee enquired whether there was any record to show that the notice of 1st February, 1960 was delivered to the party concerned. The representative of the Board stated: "The record does show that the letter was actually issued. But the record showing actual delivery of the letter to the party is not available." Asked how demand notices were normally served on the parties, the representative of the Board stated, "where the office is situated at the same place, we send it by peon book and the receipt is taken on the peon book itself. Otherwise, we send by Registered Acknowledgement Due." The Committee thereupon enquired how it was not clear whether the communication

was delivered to the party or not. The representative of the Board stated that the record of actual delivery (i.e. Peon Book) had been destroyed. In reply to another question, it was stated: "This case has not revealed any defect in the procedure of weeding as records were destroyed when no issue was outstanding and the life period of records had expired much earlier. However, as a matter of abundant caution necessary instructions have been issued to the effect that records relating to a case which happens to go a court of law should not be destroyed without prior approval of the Collector." The Committee referred to the High Court judgement and enquired why a copy of the communication dated 1st February, 1960, (which was stated to be available in the Department) was not produced before the High Court. In a written note, the Ministry have stated as follows:

"It is seen that in the body of the writ petition filed by the party there was no mention of letter dated 1st February, 1960. However, among the documents enclosed with the petition there was a copy of party's letter dated 21st June, 1961, wherein it had been mentioned that 'on going through our records we find that letter No. 288/60 dated 1st February, 1960, referred to by you in your letter under reference is not to be found there. However, we submit our reply to your letter under reference taking for granted that the said letter had been sent to us'. The affidavit filed by the Department in December, 1962 answered only points raised in the petition and the necessity of challenging party's contention of non-receipt of letter was not felt at that time. However, at the time of hearing of the case when the court specifically desired to see the letter or copy thereof it should and could have been produced as the relevant records were then available. Non-production of the copy of the letter had, however, not affected the Department's case as a similar letter produced in court in another case was held to be not a formal demand."

2.7. As regards the action taken by the Department against the officers responsible for the lapses revealed in this case, the Ministry have stated: "Out of the six officers who were considered to be responsible for the lapse, two have already retired from service; action against them has not been considered by Collector. Action against the remaining four has been initiated and is still in progress."

2.8. During evidence the representative of the Board stated that charge-sheets had been served on all the four officers. The explanation of one officer had been received. At the request of

another officer, who had demanded an open enquiry, an enquiry officer had been appointed. Explanations of the other two officers were awaited.

2.9. Pointing out that the High Court had given their decision in the case on 20th December, 1965, the Committee enquired why the Department had taken so long to initiate disciplinary action. The Finance Secretary stated: "I was really going to venture this point myself that there has been dilatoriness in starting disciplinary action." In reply to a question, the representative of the Board stated: "I think in the next two months we should be able to take a decision in the matter."

2.10. The Committee note that there were a series of lapses in this case. In terms of a notification dated 1st March, 1959 issued by the Ministry of Finance, specified types of flue cured rawa tobacco qualified for a concessional rate of duty if these were "not actually used" for the manufacture of cigarettes, smoking mixture for pipes and bidis. In this case the party concerned had clearly indicated while clearing tobacco from the godown between July and November, 1959 that these were intended to be used in the manufacture of bidis, but still these were assessed at the concessional rate, resulting in an under-assessment of Rs. 14,278.67. The mistake came to light in February, 1960 when a sum of Rs. 8,441 could have been recovered had a correct and proper demand been issued. The demand notice was issued after a lapse of 14 days by which time a further amount of Rs. 5,828·40 had become time-barred. Besides, the notice was issued under the wrong rule. Thereafter, a period of over a year and a quarter was taken by the Department to issue the demand notice under the correct rule. But this notice (dated 17th June, 1961) was vitiated because it referred to an earlier notice dated 1st February, 1960, which the High Court deciding the case held to have "clearly never been served" on the firm.

2.11. It has been stated by Government that the notice dated 1st February, 1960 was "actually issued." If this was so, it is not clear why the letter was not produced in Court. This aspect needs to be thoroughly gone into by Government. The Committee note that disciplinary proceedings are under way against the officials found at fault in this case. They would like to be apprised of the action ultimately taken.

2.12. In an advance questionnaire, the Committee desired to know the procedure for taking proceedings for re-assessment under the Central, Excises and Salt Act. They also desired to

know whether, at the time proceedings for re-assessment were taken, any show-cause notice was issued to the licensees. In their reply, the Ministry have stated: "There is no procedure under the Central Excises and Salt Act or rules framed thereunder for re-assessment as such (except where initial assessment is expressly provisional under Rule 9B of the Central Excise Rules, or where reassessment becomes necessary under Rule 159(b) after processing of Tobacco). However, assessment documents are checked by Internal Audit of Central Excise Department and some percentage check is also exercised by supervisory staff. Mistakes/under-assessments noticed by Internal Audit are required to be brought to the notice of Assistant Collector and Superintendent within a period of two months at the latest. On detection of short-levy, a demand is issued under Rule 10 or 10A as the case may be."

2.13. They have further stated: "No show-cause notice is issued. However, the licensee is at liberty to represent against the demand, on receipt thereof, if he is not satisfied with the assessment, to the Assistant Collector and if Assistant Collector also confirms the demand he (the licensee) can take recourse to appeal and revisional remedies under sections 35 and 36 of Central Excises and Salt Act."

2.14. During evidence, the representative of the Board stated: "At present there is no specific procedure under the Rules. We are taking legal powers under the new Excise Bill, which is on the anvil and which we hope to bring before Parliament in its coming (Winter 1968) session. In reply to a question he stated: "Even under the present Act we have prescribed a Rule which enables us to issue the demand in respect of man's due to Government which through some reason has not been levied or short-levied or inadvertently refunded. In the proposed enactment we are expressly writing into the Act itself that a particular procedure is required to be followed in every case invariably."

2.15. Pointing out that re-assessment proceedings were in the nature of substantive proceedings, the Committee enquired whether a show-cause notice should not be issued to the concerned licensee before the proceedings were taken. The representative of the Board stated: "Normally we issue a show-cause notice. But where the case is apparent we straightway issue a demand." In reply to a question, he stated: "Whether show-cause notice is sent or not, we have to observe the basic principles of natural justice."

2.16. In reply to another question, he stated that a detailed procedure for taking proceedings of re-assessment could be prescribed even under the present Act. The Committee desired to know the feasibility of laying down a detailed procedure under the existing Act, pending the enactment of the new Bill.

2.17. In a note subsequently furnished to the Committee, the Ministry have stated: "It is not considered necessary to prescribe a detailed procedure regarding re-assessment under the existing law in view of impending revision of Central Excises and Salt Act and Rules made thereunder."

2.18. The Committee trust that after the proposed Central Excises Bill is enacted, the procedure regarding re-assessment proceedings will be systematised. The Committee would like Government to take early action to see that the Bill is introduced in Parliament. In this connection they would like to invite attention to their observations in para 1·39 of their Thirty-Sixth Report (Fourth Lok Sabha).

2.19. Loss of revenue due to non-enforcement of the provisions of departmental manual.

Audit Paragraph

Every cigarette manufacturer must submit in support of each application for removal of unmanufactured tobacco, operation sheets showing full details of the quantities of different grades of tobacco required for manufacture. Each operation sheet gives an operation number to be assigned to each lot of tobacco which is lifted, for a specified blend of cigarette of any particular date. Separate sheets must be given for separate blends but the total requirements of a day may be removed under a single application.

2.20. In four cigarette factories in four Collectorates, it was noticed that the clearances of tobacco for the manufacture of cigarettes in the months of February, 1963 and February, 1966 were far in excess of the normal requirements with the result that a large quantity of tobacco so cleared remained unutilised in the same month and was allowed to be stored in a duty-paid godown for use in subsequent months. By this device, the four factories avoided payment of the special excise duty levied on tobacco from 1st March, 1963 and the enhanced rate of duty on tobacco with effect from 1st March, 1966. If the clearance of tobacco had

been limited to normal requirements, the Government would have gained revenue to the extent of Rs. 6,39,496.

2.21. The Ministry in their reply have contended that the instructions contained in the Cigarette Manual do not impose any limits on the clearances of manufactured tobacco; nor were any statutory restrictions imposed on clearance of unmanufactured tobacco during the months of February, 1963, and February, 1966. The reply does not however indicate why the Central Government has not considered necessary issue of orders under Rule 224 of the Central Excise Rules.

[Paragraph No. 23(ii), Audit Report (Civil) on Revenue Receipts, 1968.]

2.22. The Committee were informed that Rule 224(3) of the Central Excise Rules as it stood prior to its amendment in February, 1962 read as follows:

"Except in special circumstances where the Central Board of Revenue by general or special order in writing, otherwise directs, the quantities of excisale goods clearned for home consumption from a factory or from a warehouse (including quantities cleared under the proviso to rule 9A during transit from one warehouse to another) during the month of February each year shall not exceed the following percentages of the total quantity cleared for home consumption from that factory or warehouse during the first three months of the previous year:

First fourteen days	..	16 per cent.
The whole month	...	32 per cent.

If no excisable goods were clearned for home consumption from that factory or warehouse during the first three months of the previous year, the clearance during the month of February shall not exceed such quantities as the Central Board of Revenue may declare to be reasonable in the circumstances."

2.23. The object of the rule was "to counteract possible heavy speculative clearance during the months of January and February in anticipation of budget changes."

2.24. In 1962, the rule was changed. The original rule as it stood contemplated restriction during the month of February only. The amendment was made "in order to enable the Government to impose restrictions on clearances on the eve of any

budget. Quantum of restricted clearances was also revised." The amended rule reads as under:

"(3) The Central Government may from time to time, by notification in the Official Gazette, impose such reasonable restrictions as it may consider necessary on the quantities of excisable goods which may be cleared for home consumption from a factory or from a warehouse (including quantities of excisable goods referred to in the first proviso to sub-rule (1) of rule 9A) during any period not exceeding four weeks in a year; and where any such notification is issued, the quantity cleared during any of the four weeks shall not exceed by more than fifty per cent of the weekly average of the quantity cleared during the twelve months immediately preceding the month in which the restriction is imposed." Explaining the implication of the amended rule, the Finance Secretary stated during evidence that upto 1962 the position was that Government had every year to issue an order after deciding whether they intended applying any control on the releases. The rule, he added, was "a kind of charging section but limited only to clearance in the month of February." After the amendment of the rule in 1962, the provision became "an enabling one not limited just to the pre-budget month (February)."

2.25. The Committee asked for figures of production of cigarettes and releases of tobacco during 1963 and 1966 in respect of the four factories mentioned in the Audit paragraph. The information furnished is at Appendix I. The Committee also asked for figures of clearances of tobacco in February each year in relation to the releases during the preceding six months for six years since 1960. The information furnished is at Appendix II. The Committee enquired why no restrictions on clearances in the month of February were imposed. They pointed out in this connection that during 1963 and 1966 when there were large clearances, the duty also underwent enhancement. The Member (Excise) stated that the figures of clearance would show that they had been "within 50 per cent except in one case, namely M/s. ..... C. ., where it was more than 65 per cent." Explaining the position, the Finance Secretary stated that from the figures of clearances made by the factories "no sort of conclusion will emerge." "The pattern", he added, "is really erratic", in that in some cases the clearances in the month of January exceeded the February clearances. "During 1963-64 and 1964-65, when there had been very large clearances, ...there has been no increase of duty." He added: "On the pattern of facts as emerged it would be difficult to make out a confident case for applying Rule 224."

2.26. To a question whether the Rule had been invoked at all, the Finance Secretary stated that "from 1957 to 1962, though the Rule was there, the restriction was never imposed." Even after the Rule was amended to make it an enabling provision, it had not been invoked. "There is", he proceeded, "an enabling provision in so many regulations. Government take enabling powers for dealing with special situation, but they do not (always) think it fit to exercise those enabling powers....It is really a question of judgment on the facts of a situation." Explaining why the Rule had never been invoked, the Finance Secretary informed the Committee that several reasons have weighed with Government in this regard. "The restrictions (on clearances) increase profiteering just adding to middleman's profits." Then there was "the possibility of inadequate implementation because clearance of raw material and stores for a large number of factories has to be looked into....The question really is....a matter of choosing between two evils. The effect of imposing a restriction is to encourage speculators and middlemen to put stocks underground and to create a situation of shortage and scarcity and realise higher price .... (That) is one kind of evil. The other is to let the things flow more or less evenly even though there is a normal expectation on the eve of the budget in respect of certain commodities (which) are hardy annuals that they would probably come in for some step-up in excise. The judgement of Government on this has been that it is far better not to put any curb on clearances so that the market may not start speculating ..... and thus put consumers to unnecessary hardship.

2.27. The Committee enquired whether the margin of 50 per cent over previous clearances fixed in the Rule for purpose of regulating pre-budget clearance was not rather liberal. The Finance Secretary replied: "Whether this 50 per cent is high or low is a matter on which a snap view cannot be taken. The trade practices, production patterns etc., are involved and one cannot just say whether 50 per cent is high and should be scaled down." In a note it has been stated: "It is desirable that there should be no interruption in the smooth flow of essential commodities into the market and a condition of scarcity is not created. Some latitude has, therefore, to be given in the matter of clearances. It was considered desirable in 1962 to make the Rule flexible and indicate that clearances each week will not exceed 1.5 times the weekly average of previous 12 months."

2.28. The Committee enquired whether it "was not much better to have the older Rule," (as it stood prior to its amendment) as it

would then "come automatically into operation unless the operation was stopped by Government by issuing an order." The Finance Secretary replied: "All I can say is to take the Committee back to the past when the position was exactly the same and the old Rule was not applied. But if it be the considered view of this Committee, then I will put the matter to Government in connection with the contemplated amendment of the Central Excise Act."

2.29. The Committee would like to point out that Rule 224(3) of the Central Excise Rules has an important purpose to serve. It is intended to curb speculative clearances of excisable goods in pre-budget months so that avoidance of possible duty increases may not take place. While the Committee recognise that the powers under the Rule will have to be exercised with circumspection so that smooth movement of vital commodities in the market is not interfered with, they would like to point out that restrictions on speculative clearances to circumvent chances of enhancement of duty will sometimes be necessary. The Committe would like Government in this connection to consider the following suggestions:

(i) The Rule as it stands now is an "enabling" provision. Government "may" impose restrictions on clearances and if they choose to do so, they have to issue a notification in this behalf. As it stood prior to its amendment in 1962, the Rule was a "charging section" in that it became operative "except in special circumstances" when "by general or special order" Government so directed. It might be an advantage to revert to the pre-1962 position in this respect. In that case Government will be specifically called upon on every occasion to take a considered decision whether there are any compelling circumstances to warrant the relaxation of the charging provisions of the Rule, which imposed a limitation on clearances in the pre-budget month with reference to the average clearances during the preceding three months.

(ii) The clearance in pre-budget month now permitted under the Rule is 1¼ times the clearance in the preceding twelve months. It requires consideration whether this limit is not unduly high and should not be reduced to 33 per cent as prevailing before the amendment in 1962.

Underassessment in respect of Mineral Oil

Audit Paragraph

2.30. Under a notification issued in February, 1960, Special Boiling Point spirits with certain specified boiling point ranges were allowed the concession of being assessed at Rs. 45 per K.L. instead of at the tariff rate. An oil installation was clearing a mineral oil product known as Hexane on payment of duty at the concessional rate as Special Boiling Point spirit. A chemical test of the oil was suggested in April, 1965. It was reported that according to the Deputy Chief Chemist the oil was eligible for the concession. However, on a further test, it was found that the boiling point range of the product did not fall in any of the ranges prescribed under the notification of February, 1960 and accordingly the product was not eligible for the concession. Demands have been raised by the Department for Rs. 4·96 lakhs for the period from 20th July, 1966, to 25th November, 1966, from which date a specific exemption has been given to Hexane by including the range of boiling points relating to it, on a representation from the concerned oil company. For the earlier period, rectification was stated to be time-barred. The loss of revenue for the period upto 19th July, 1966, is Rs. 11·51 lakhs.

2.31. The Ministry have replied that the intention had all along been to exempt Hexane. If so, it is not clear why the original notification did not cover the Special Boiling Point relating to Hexane itself and further why in August, 1960, the Ministry directed that the scope of February, 1966, notification was limited to those grades of Special Boiling Point spirits specified therein and should not be extended to other grades. The issue of further notification dated 25th November, 1966, rectifying this position has not only resulted in debarring revenue from being collected but also in discriminatory assessments.

[Paragraph No. 24(i), Audit Report (Civil) on Revenue Receipts, 968.]

2.32. The Committee note that in his letter dated 17th June 1967, addressed to the Board, the Collector of Central Excise, Bombay had, *inter alia*, stated: "..... if the notification No. 186/66, dated 26th November, 1966 is given retrospective effect, the amount that would be refundable* to the oil companies would be Rs. 1,26,13,208.."

*In a clarification, the Ministry have stated that the expression 'refundable to the oil companies' had, through inadvertence been used for the word "forgone".

2.33. According to a note submitted to the Committee, the following was the intention behind the notification of February, 1960, which provided for concessional rates of duty being charged on Special Boiling Point Spirits:

"Special Boiling Point Spirits, which attract duty as Motor Spirit, were, till 1959, generally imported. However, since these spirits did not find use as fuel for internal combustion engines but were utilised as solvents for industrial purposes, keeping in view their end-use, the imported Special Boiling Point Spirits were charged to duty at the concessional rate (applicable to kerosene).

2.34. The Committee were also informed that the omission of Hexane from the notification of February, 1960 was inadvertent. "When indigenous production of Special Boiling Point Spirits commenced, extension of the concession of assessment at the lower rate of such of the indigenously produced Special Boiling Point Spirits, as were being then utilised as solvents for industrial purposes, was considered, and it was decided to allow the benefit to all indigenous Special Boiling Point Spirits with ranges comparable to those of imported spirits. Though Hexane (Special Point Spirit with a range of 63°—70°C) was being then imported and consequently the case of this particular grade of Special Boiling Point Spirit was also considered, when submitting the summary for obtaining Finance Minister's approval and notifying the concession, this particular range got inadvertently excluded. The omission of this grade was, however, not noticed presumably because Hexane was being indigenously produced then. Though the concession was limited to Special Boiling Point Spirits with nominal boiling point ranges specified in the notification, the need for extension of the concession, after consideration on merits, to other grades of indigenously produced Special Boiling Point Spirits was recognised.

2.35. During evidence, the representative of the Central Board of Excise and Customs stated that the concessional rate was applied in the Collectorates of Excise, Bombay and Baroda within whose jurisdiction, Hexane was manufactured. It was not manufactured in any other Collectorate. The first consignment of indigenous Hexane was cleared by the Assistant Collector of Jamnagar under whose jurisdiction Okha Port fell. He cleared it in 1964 on receiving a test report from the chemical examiner certifying that it passed the test. He also stated that the Ministry's instructions of August, 1960 directing that the scope of February, 1960 notification was limited to the grades of Special Boiling Point Spirits specified therein was issued in some other context. In reply to a question, he, however, conceded that the Boiling Points range appropriate to Hexane

(63°—70°C) was not included in the February, 1960 notification and, "on literal interpretation", "the concessional rate could not have been given at the point of time." Asked on what authority the concession was given, he stated: "Strict authority there was none." The Committee enquired why then Hexane was charged to duty at the concessional rate. The Finance Secretary stated that it was in accordance with the intention of Government all along. To substantiate this statement, the representative of the Board read out the following extracts from the Minutes of the Inter-Ministerial Meeting of 17th November, 1959 when the issue was discussed. "Shri..... (the then Chief Chemist) pointed out that after prolonged enquiries and tests he had come to the conclusion that no easy method was available to distinguish Special Boiling Points from Motor Spirit. The testing of motor spirit and aviation spirit required costly and complex equipment including Reid Vapour pressure apparatus number. The Board's laboratories do not possess them and it would be impracticable to acquire them because apart from cost the laboratories have not got enough accommodation. He was of the view that the following grades of Special Boiling Point Spirits could safely be considered to be not motor spirits:—

* * * *

* * * *

9. Hexane 65°C—70°C"

2.36. The Committee referred to the summary submitted for obtaining Finance Minister's orders in January, 1960 for granting partial exemption to special boiling points spirits. Para 9 of the summary mentioned various Boiling Point ranges such as 40—65°C, 50—110°C, 55—115°C, 60—80°C, 60—120°C, 70—80°C, 80—100°C, 100—130°C, but not the Boiling Point range appropriate to Hexane (*viz.*, 63°—70°C). The representative of the Board stated that this range was inadvertently omitted in para 9. He referred to para 11 of the summary which read as follows:

> "Having regard to the instructions listed in para 8 *supra*, it is proposed that indigenous special boiling points having boiling ranges equivalent to the boiling ranges of imported grades mentioned in para 9 may be assessed to duty at 20 np. per Imperial gallon only."

According to him, as Hexane was being imported, it was covered by para 11. The Finance Secretary explained:

> "While the intention was that spirits, other than motor spirits, required for (use as) industrial solvents should be exempt-

ed. Probably the mistake was that 63—70° was also intended to be contained in 68—80°C, whereas that should have been separately mentioned."

He added:

"We have also checked up that the price at which Hexane has been sold corresponds to this lower range of duty."

2.37. The Committee enquired, if the intention of Government had all along been to exempt Hexane, why demands amounting to Rs. 70 lakhs were raised by the Central Excise authorities. The representative of the Board stated that the demands were raised pursuant to an Audit objection. This, however, did not necessarily indicate that they considered Audit objection as valid. In reply to a question, he admitted that they had raised a demand of Rs. 3 lakhs on their own, without Audit having asked them to do so.

2.38. The Committee desired to know whether the Collector of Central Excise, Bombay who had raised a doubt in September, 1966 as to the correct interpretation of the notification of February, 1960, made a reference to the Board for clarification. The representative of the Board stated that according to the established procedure in this behalf, the collectors were, in the first instance, required to correspond among themselves and reconcile the doubt. In accordance with this procedure, he wrote to the Collector of Central Excise, Baroda. The Board which had, in the meantime, received a representation from the Oil Companies, called for a report from the Collectors on 1st October, 1966. Representations had also been received from the user industries like the rubber industry, the solvent extraction plants and others. Having considered the whole matter, the Board came to the conclusion that the notification of February, 1960 needed to be amended. The notification of November, 1966 was a sequel to this.

2.39. The Committee enquired whether before issuing the notification of November, 1966, exempting Hexane, the approval of the Finance Minister was taken. The Finance Secretary stated that the approval of Finance Minister was taken in Augsut, 1968. Asked whether the notification of November, 1966, which had been issued without the approval of the Finance Minister was valid, the Finance Secretary stated:

"The notification was issued on the authority of the Secretary to Government which is assumed under the Rules of Business as carrying the authority of the Central Government."

Drawing attention to the fact that the initial notification was issued with the Finance Minister's approval, the Committee enquired whe-

ther it was appropriate to have amended that notification without the approval of the Minister. The Finance Secretary stated:

> "As the purpose was quite clear from the beginning and the orders had been obtained on certain principles, the subsequent notification only filled a lacuna."

2.40. In a subsequent note, the Ministry have stated:

> "No notification has been issued in respect of Hexane with retrospective effect. In general, it may, however, be stated that no specific provision has been made under the Central Excises and Salt Act, 1944, empowering the Government to give retrospective effect to an amendment to a notification. However, Minister's approval is invariably obtained whenever duty relief with retrospective effect is given."

2.41. In a note furnished to the Committee, the Ministry have stated that demands for Rs. 70 lakhs for the period prior to 26th November, 1966 were raised in this case. Demands for Rs. 93 lakhs could not be raised due to the operation of the time-bar. The demands raised were being withdrawn as necessary executive instructions to regularise the assessment of Hexane at concessional rates of duty during the period prior to 26th November, 1966 had since been issued.

2.42. The Committee are surprised that while issuing the relevant notification there should have been an omission to include Hexane in the list of boiling points spirits entitled to the concession when it was Government's intention to charge Hexane a concessional rate of duty *ab initio*. **The Committee note that Government have since issued a notification in September, 1966 to extend the concessional rate specifically to Hexane and that Government have also verified that the price at which Hexane was sold earlier to users corresponded to the concessional rate of duty.**

2.43. The Committee would like to stress the need for the utmost care in the issue of notifications so that they spell out the intention of Government in precise and unequivocal terms, leaving no scope for doubt whatever.

Non-levy of Central Excise Duty

Audit Paragraph

2.44. According to the Central Excises and Salt Act, 1944 and the Rules framed thereunder manufacturers of paints and varnishes are required to take a licence. If the total output of paints and varnishes does not exceed 150 metric tonnes in a financial year no duty is leviable on the first 50 metric tonnes cleared from the factory during

the year. The Central Board of Revenue issued instructions in February, 1961 that manufacturers producing paints and varnishes, below the exempted limit, need not be licensed. Since these instructions were not consistent with the provisions of the Act they were subsequently revoked in July, 1962 and such manufacturers were also required to be licensed from 1963.

2.45. A manufacturer was producing and clearing paints and varnishes without taking a licence from the year 1959 to 1964. The offence was compounded by the department in March, 1965, for a nomination sum of Rs. 5. Further no excise duty was collected by the department on the goods manufactured. The department have since raised a demand for Rs. 49,249 (in July, 1967) in respect of the goods cleared by the manufacturer from the 1st January, 1963 to the 15th July, 1964, and the demand remains to be realised.

[Paragraph No. 25, Audit Report (Civil) on Revenue Receipts, 1968]

2.46. During evidence, the representative of the Board stated that initially the manufacturer had a licence. Subsequently, the Board decided that manufacturers producing paints and varnishes below the exempted limit need not be licensed. On reconsideration, it was felt that it would be advantageous to license these units also. These units were accordingly licensed from the 1st January, 1963.

2.47. Pointing out that the factory was manufacturing and clearing goods from 1959—1964 without a valid licence, the Committee enquired whether the failure of the manufacturer to otbain a licence was noticed by the Department or he himself brought it to the notice of the Department. The representative of the Board stated that it was detected by the Department.

2.48. According to a note furnished by the Ministry, the year-wise output of the manufacturer for the years 1959-60 to 1963-64 was as follows:

Financial Year	*Output*
1958-59	15,820 IMP gallons
1959-60	10,098 ,,
1960-61	9,882 ,,
1961-62	46,817 Litres
1962-63	28,558 ,,
1963-64	43,531 ,,

2.49. The Committee enquired how the Department had ascertained the output of the manufacturer. The representative of the Board

stated that the manufacturer was maintaining some sort of accounts; the quantity produced was ascertained from these accounts. The Committee enquired whether during the period the factory was delicensed, it maintained daily production and clearance records as prescribed by the Central Excise Rules. The requisite information has been furnished in a note as follows:

> "During the period 1959—64, the factory was not maintaining daily production and clearance records. The officers concerned appear to have accepted the information furnished by the proprietor of the factory initially when he applied for licence and the factory was brought under excise control in 1964, and concluded that the factory was in the exempted sector."

2.50. The Ministry have further stated in the note. "....according to the original report received from the Collector the factory had been in the exempted sector. A special investigation has since been conducted in detail with regard to the duty liability of this factory. The investigation has revealed that during the period from 1959-60 to 1963-64 paints and varnish cleared by the factory were not eligible to be cleared free of excise duty under the relevant notification. As a result of the detailed probe made into the accounts of the factory (*e.g.*, sales register and invoices) demand for Rs. 18.816·04 has been raised on 25th October, 1968 in respect of the clearances made during the period from 1959-60 to 16th July, 1964 and another demand for Rs. 3.946.46 has also been raised in respect of the excess clearances made during the period 1964-65 and 1967-68. Clearances effected during the year 1965-66 have been found to be within the exemption limit and duty leviable during the year 1966-67 had already been collected. The Collector has reported that the manufacturer has filed an appeal on 6th December, 1968 against the demands mentioned above and the appeal is now under the Collector's consideration."

2.51. The Committee enquired whether the composition fee of Rs. 5 in this case was considered to be adequate. The representative of the Board stated:

> "The goods produced by this particular party fell within the exempted limit. As such, the compounding authority thought that a nominal compounding fee, which will cover the amount of the licence, would be sufficient."

In reply to a question, he stated that under the law, they could not compound an offence for more than Rs. 2,000.

2.52. The Committee observe that the factory in this case was manufacturing and clearing excisable products without a licence

for five years from 1959 to 1964, when it did not pay any excise duty. When its failure to take a licence was detected, it was compounded for a sum of Rs. 5. This was done on the consideration that the output of the factory was below the exempted limit. Subsequent investigations have, however, disclosed that the output of the factory was above the exempted limit and that it was liable to pay excise duty. As a result of these investigations, a demand for Rs. 22,762 has now been raised towards duty payable upto the end of 1967-68.

2.53. From the foregoing facts it is evident that the figures of output furnished by the factory were accepted by the Central Excise authorities without scrutiny. The Committee would like Government to examine why there was laxity in this regard and what action is called for.

2.54. The Committee note that the manufacturer has gone in appeal to the Collector against the demands raised by the Department. They would like to be apprised of the final decision in this regard.

Incorrect accountal of excisable finished products and consequent loss of revenue

Audit Paragraph

2.55. A chemical factory produces soda ash and ammonium chloride. The latter is produced by first preparing ammonia gas. Soda ash is assessable to central excise duty, while ammonia was so assessable upto February, 1964. The principal raw material used by the factory for production of both soda ash and ammonium chloride is common salt. In its quarterly return of materials used and optput for the quarter January-March, 1964 submitted in April, 1964, the factory showed a consumption of 5476 M.T. of common salt. Subsequently in July, 1964 the factory submitted a revised return in which it showed an increased consumption of common salt viz. 7376 M.T. during that quarter. The factory, however, did not show any increase in the output of soda ash and ammonium chloride.

2.56. Although the matter was reported by the local Central Excise Officer in November, 1964 to his Superintendent no action was taken by the department for imposing any additional duty. In April, 1966, audit pointed out that as the increase in consumption of raw material was not satisfactorily explained, additional

duty should be imposed on the consequential increase in the output of soda ash and ammonium chloride. The Department agreed with this and in May, 1967, imposed Rs. 69,021 as additional duty on the factory. The particulars of realisation of this amount are awaited.

[Paragraph No. 26, Audit Report (Civil) on Revenue Receipts, 1968.]

2.57. The Committee, enquired whether the demand for Rs. 69,021 towards additional duty had been realised. The Department have stated in a note that the party has gone in appeal against the demand on 14th June, 1968. The main point made in the appeal "is that the demand is based on suspicion caused due to revision of figures mentioned in R.T. 5 return". The appeal was "pending decision" by the Collector of Central Excise concerned.

2.58. The Committee note that the return regarding raw materials consumed for production during the quarter ending March, 1964, was revised by the factory in this case within four months of the submission of the original return in April, 1964. The revised return showed an increase of nearly 2/5ths in consumption but the Department did not ascertain at that stage whether the original figures of production reported by the factory were correct and whether the factory was liable to pay extra duty. After Audit drew the attention of the Department to this matter in April, 1966, the Department raised a demand for additional duty amounting to Rs. 69,021 in May, 1967, against which the party has gone in appeal. The Committee would like to be apprised of the outcome of the appeal. The Committee would also like Government to investigate whether any steps were taken by the Department when the party reported increased consumption of raw materials in his factory, to verify if there had been a consequential increase in output and liability of the factory to duty.

Loss of Revenue due to allowing discount on excise duty included in all-inclusive prices

Audit Paragraph

2.59. Under a special procedure prescribed in a Notification of Government issued in May, 1962, patent or proprietary medicines are assessed to central excise duty after allowing an *ad hoc* discount of 25 per cent on the consumer prices or where consumer prices are not available, 10 per cent on prices to retail dealers

declared by the manufacturers. The procedure adopted was to deduct first the discount of 10 per cent or 25 per cent as the case may be from the all-inclusive prices declared by the manufacturers and then allow abatement for excise duty. The resulting price was the value of assessment on which the appropriate rate of duty was calculated. The method was defective as if permitted the grant of *ad hoc* discount even on the element of central excise duty included in the declared prices and was resulting in loss of revenue. The matter was brought to the notice of the Central Board of Revenue in September, 1963, who at that time did not agree with audit view but confirmed the pattern of assessment followed by the departmental offices. The exemption notification of May 1962, was however, amended and reissued in March, 1966, in which an 'explanation' was inserted to the effect that the element of excise duty, whenever included in the price, should first be deducted before allowing the permissible *ad hoc* discount. The delay in issuing clarification regarding the manner of calculation of assessable value has resulted in loss of revenue to the extent of Rs. 3,03,444 (approximate) in respect of four factories for the period from October, 1963, to March, 1966, in one Central Excise Collectorate alone.

[Paragraph No. 27(i) (a), Audit Report (Civil), on Revenue Receipts, 1968].

2.60. Even after the insertion of the 'explanation' in March, 1966, regarding the correct manner of deducting the assessable value from all-inclusive prices; the old incorrect method was continued to be adopted in the same collectorate resulting in excessive abatement of duty and consequent lower assessable value, leading to loss of revenue. The amount of loss involved on this account for the period upto 31st January, 1967 in the case of a few factories worked out to Rs. 1,10,570.

[Paragraph No. 27(i)(b) Audit Report (Civil) on Revenue Receipts, 1968].

2.61. The Committee drew the attention of the representatives of the Board of indirect taxes to the fact that in September, 1965, Audit had pointed out that the methods of calculation of *ad hoc* discount was resulting in under-assessments Besides, the procedure of basing the discounts on cum-duty prices was also discriminatory in as much as a manufacturer showing his price exclusive of duty was required to pay more duty than one who

showed his prices inclusive of duty. The Committee enquired why it took nearly three years for Government to amend the notification to provide for the duty being deducted from cum-duty prices before working out the discount. The position was explained to the Committee as follows:

"Notification No. 91/62-CE, dated 15th September, 1962 which was in force till 25th March, 1966 contained the following clause:—

> "In case the price lists include the amount of excise duty, abatement of excise duty shall be allowed."

This notification, which was the law regulating the *ad hoc* discount procedure at the time, did not specify whether the discount should be deducted first or the duty should be deducted first. If the price declared by the manufacturer was inclusive of duty, the practice of allowing discount on the basis of the cum-duty price was correct and it was in accordance with the well-established practice followed for a long time both on the Customs and Central Excise sides in regard to normal *ad valorem* assessments. The question of issuing instruction to deduct duty first from the cum-duty price before allowing discount could arise only after the notification itself was revised on 26th March 1966 and an Explanation inserted therein laying down specifically that the element of excise duty, if any, added to the price of any of the medicines shall be deducted before allowing the discount. The wording of the Explanation was clear enough and it was not considered necessary to send any detailed calculations to the Collectors at that stage. Occasion to amend the earlier notification arose in a different context. The earlier notification did not permit assessment on the basis of wholesale price-list if the manufacturer had a consumer price-list. With the promulgation of the Drugs (Display of Prices) Order, 1962 in December, 1962, every manufacturer of medicines was required to publish both wholesale and consumer price-lists. By the mere fact that a consumer price-list was in existence, the earlier notification ruled out assessment on the basis of wholesale price list. When the Chairman of Central Board of Excise and Customs visited Bombay in July, 1965, the representatives of the Bombay Chamber of Commerce and Industry met him and requested for a separate and independent option of assessment on the basis of publicised wholesale prices being given. It was this development which ultimately led to the issue of the new notification in March, 1966."

2.62. The Committee pointed out that by virtue of the Drugs Display of Prices Order, 1962, promulgated by the Ministry of Health, it became obligatory for manufacturers to publish the price list

applicable to the dealers as well as the price list applicable to the consumers. This order was issued in December, 1962. If the notification of May, 1962 took cognisance only of the consumer price list and not the wholesale price list, the maintenance of which became obligatory by virtue of the Drugs Disploy of Prices Order, Government could have amended the notification after December, 1962, when the order was issued and need not have waited for three years. The witness replied, That is a very valid point. Although they (Ministry of Health) issued it (the Order) in December, 1962, effectively it could be enforced only in July, 1963. Ultimately when the Member happened to visit Bombay late in 1965, same Chamber of Commerce people met him and represented that in view of the changed position, we should rectify the notification (of May, 1962)."

2.63. According to the principle embodied in the Explanation inserted under notification of March, 1966, in case of 'medicines' where the price is inclusive of excise duty, the element of excise duty is to be deducted first before allowing the discount. The Committee desired to know the views of Government regarding the extension of the principle to other commodities where the price was inclusive of excise duty. In a note, the Ministry have stated:

"The normal provision for determination of value exists in Section 4 of the Central Excise and Salt Act. The Section provides for abatement or deduction in respect of trade discount and duty but does not lay down any order for deducting them. In the case of Patent or Proprietary Medicines assessed under the exemption Notification the assessable value is determined in an *ad hoc manner* laid down in the notification. The notification gives the order in which duty and discount are to be deducted. The question of extension of the principle of deducting duty first as laid down in this notification to other commodities in general was placed before the Ministry of Law. The Ministry examined the points of view of the C. & A.G. and this Ministry in a joint discussion and then advised that extension of the principle to other commodities, the assessable value of which is determined under Section 4 of the Central Excises and Salt Act, 1944, is not legally feasible. Under the circumstances, extension of the principle is feasible to only those commodities the assessable value of which is not determined under Section 4 and which have a similar *ad hoc* procedure for valuation as patent or proprietary medicines. This matter is separately under consideration."

2. 64. In the note dated 23rd August 1968 recorded by the Ministry of Law on this point, it has, *inter alia*, been stated:

> "The whole matter turns on the interpretation of the provisions in section 4 of the Central Excises and Salt Act, 1944. That section provides for the determination of value of an article for the purpose of duty. It provides, *inter alia*, that the value on which the rate of duty should be calculated is the "whole-sale cash price for which an article of the like kind and quality is sold or is capable of being sold" at the time of the removal of the article from the factory etc. It is also provided in the Explanation to that section that in determining the price of any article no abatement or deduction shall be allowed except in respect of trade discount and the excise duty payable at the time of removal. The question is on what basis this 'trade discount' should be calculated."

2.65. "The words 'trade discount' are not words of art. That expression has not been defined in the Act. It follows that expression should be given the meaning it conveys in the English language. Trade discount is a discount in price allowed as between the purchaser and seller of a commodity and is thus a matter governed by the terms of contract, express or implied, between them because every sale involves a contract. A contract of sale may or may not provide for a discount in the price. If it does provide for such discount, the actual amount of discount is also a matter of agreement between the parties. Even if parties adopt a prevailing custom in this regard, the legal position is that the discount is deemed to be agreed to between the parties. It would follow, therefore, that when the Explanation to section 4 speaks of trade discount, it only means such discount as is actually allowed in each individual case. There is no basis for any assumption that a uniform discount applicable to all commodities or all contract is envisaged in this provision."

2.66. "The only reasonable interpretation to be given to the provisions of section 4 is that for applying the rate of excise duty on articles chargeable *ad valorem* the wholesale cash price referred to in clause (a) of that section should be reduced by the trade discount, as explained above and the amount of excise duty. The actual amount to be deducted by way of trade discount depends upon the facts of each case and no uniform deduction can be allowed. If there is any contract, express or implied, between the parties, the amount agreed to between the parties as trade discount, if any, is all that can be deducted under this head. No discount is permissi-

ble on general considerations like trade practice etc. in the absence of specific proof that such discount was, in fact, allowed in particular case and for the particular commodity."

2.67. During evidence, the representative of the Board stated that Government were proposing to bring forward a comprehensive Bill to amend the existing Central Excise law "in which provisions relating to valuation were likely to undergo a material change."

2.68. The Committee regret that it took Government nearly three years to rectify a defective procedure followed in the assessment of the value of patent and proprietary medicines for the purpose of levy of excise duty. The procedure which was prescribed in a notification issued in May, 1962 provided for the value of the medicines being based on prices indicated in the manufacturers' price-list. For this purpose the value as shown in the price-lists was to be discounted by a specified percentage, abatement being also given for the element of duty included in the price. Now-manufacturer showing his prices exclusive of duty qualified for a ever, the discount was applied to prices without deducting the duty element, with the result that the assessable value was depressed and the items were underassessed. Besides causing loss of revenue, this procedure of applying the discount to cum-duty instead of ex-duty prices was also discriminatory, inasmuch as a manufacturer showing his prices exclusive of duty qualified for a lower discount than a manufacturer showing his prices inclusive of duty. Audit had in September, 1963, pointed out to the Department that the procedure of working out discount as cum-duty prices was defective, but it was not till March, 1966, that Government amended the notification suitably. In the meanwhile Government lost revenue to the tune of Rs. 3.03 lakhs in one Central Excise Collectorate alone.

2.69. The Committee are not convinced by the reasons given by Government for the delay in amending the notification till 1966. They hope that steps will be taken by Government to ensure that prompt action is initiated on suggestions made by Audit which have substantial revenue implications.

2.70. A more important point arising out of this case relates to the rationalisation of procedure for determining the assessable value of commodities, where such value is worked out backwards from market prices, which include the duty element. It would obviously be necessary to ensure that in such cases the element

of discount is applied only after deducting from the market prices the element of duty.

2.71. The Committee note that, according to the view expressed by the Ministry of Law, an extension of the principle to other commodities, the value of which is determined under section 4 of the Central Excises and Salt Act, 1944, is not legally feasible.

2.72. The Committee were informed in evidence that Government proposed to bring forward a comprehensive Bill to amend the existing Central Excise Law "in which provisions relating to valuation were likely to undergo a materbial change."

2.73. The Committee would like the Ministry of Finance to examine, in consultation with the Ministry of Law, whether, at the time of bringing forward the proposed Bill, the relevant section could be so framed as to allow for the extension of the principle to other commodities.

2.74. The Committee enquired why even after amendment of the notification in March, 1966, one of the Collectorates continued to follow the old procedure resulting in a loss of revenue of Rs. 7.1 lakhs. The Representative of the Board stated: "..... There had been gross failure of machinery. At what level it has failed is a matter for investigation and on which the responsibility will certainly have to be fixed." He added in this connection that explanations of the officers concerned, called for by the Board, together with the relevant records, had been received.

2.75. In reply to a question, he stated that the fact that "totally wrong multipliers" were being used in the Bombay Collectorate did not come to their notice till they received the Audit paragraph.

2.76. In reply to further question whether officers in the higher formations were made aware of the implications involved in the amendment issued in March, 1966. The representative of the Board stated, "Certainly.....they were made specifically aware of the implications."

2.77. In a note furnished to the Committee, the Ministry have stated:

> **"The changes brought about by the explanation to the notification No. 39/66 dated the 26th March, 1966 were explained to the Collector of Central Excise, Bombay under Board's letter dated the 21st July, 1966."**

2.78. The Committee enquired whether, similar amissions occurred in other collectorates also. The Committee was apprised of the following position:

Collectorate	Loss of Revenue	Amount recovered	Remarks
	Rs.	Rs.	
Baroda	17,295·27	1,599·02	Remaining amount time-barred.
Madras	4,321·92	1,552·80	One demand for Rs. 1,663·43 under dispute. Remaining amount of Rs. 1,105·69 pending realisation.
Delhi	5·93	5·93	
Kanpur	868·78	868·78	
Nagpur	369·62	369·62	
W. Bengal	83·03	83·03	
Hyderabad	69·44	69·44	
TOTAL	23,013 99	4,548·62	

The Committee were informed by Audit that the underassessment in the Bombay Collectorate was finally worked out as Rs. 16,75,000 for the period upto 30th November, 1967 instead of Rs. 1,10,570 upto 31st January, 1967 as originally stated in the Audit Report. Out of this amount of Rs. 16,75,000 demands for 3 months for Rs. 82,301.20 were issued and realised and the balance was barred by limitation.

2.79. The Committee regret to observe that as a result of non-observance of the principles laid down in March, 1966, for the assessment of the value of these medicines, Government lost revenue to the tune of Rs. 15,92,699 upto 30th November, 1967 in one Collectorate alone. The short-levy in seven other Collectorates amounted to Rs. 23,013 out of which a sum of Rs. 4,548 had so far been realised. The Committee note that this happened due to what the representative of the Board characterised as "a gross failure of machinery". They also note that the matter is

under investigation for fixing responsibility. The Committee would like to be apprised of the outcome of their investigations.

2.80. The Committee would also like to be informed of the progress made with the realisation of pending demands in this case in all the Collectorates.

Loss of Revenue due to modification of orders relating to stocks of branded medicines lying in the factory premises on 23/24-4-62.

Audit Paragraph

2.81. The definition of Patent or Proprietary medicines as introduced by the Finance Act, 1961, was amended by the Finance Act, 1962, so as to cover all medicines with branded names, monograms, labels etc. also, for the purpose of levy of central excise duty. It was stated by the Ministry of Finance in 1962 that the stocks of such branded medicines lying with the manufacturers on the crucial date of 23/24th April, 1962 would also become chargeable to central excise duty from that date. Accordingly, central excise duty was recovered by the department. Subsequently, however, the Board ruled in February, 1965 that the levy on such branded medicines in 1962 should be considered as a new levy, and consequently all stocks of such medicines manufactured prior to the midnight of 23/24th April, 1962 and lying within the premises of production in a fully packed condition on the crucial date would not attract duty. As a result of these modified orders, central excise duty to the extent of Rs. 1,42,763 was refunded to the manufacturers in four collectorates, though it is admitted that out of this, Rs. 48,302 already collected from the customers, had not been refunded to them by the manufacturers.

(Paragraph No. 27(ii), Audit Report (Civil), Revenue Receipts, 1968.)

2.82. Explaining the circumstances leading to the modification of April, 1962 instructions in 1965, the representative of the Board stated that after duty had been levied on the stocks of branded medicines lying with the manufacturers on 23/24th April, 1962, one of the parties came up in revision pleading that duty was not legally leviable in respect of stocks manufacturerd prior to the date of levy. The matter was referred to the Ministry of Law which agreed with this view. The Ministry of Law stated that, "the 1962 budget had made a substantive and material change in the definition of proprietary and patent medicines. Duty could not

therefore be levied under the modified definition on stocks of medicines which were not excisable under the old definition and which were in a fully manufactured and packed condition prior to the change in definition." The witness further stated that even in March, 1961 when medicines were brought within the purview of Central Excise, drugs and medicines fully manufactured before the date of levy were not taxed. It was only on medicines manufactured subsequent to the date of levy that duty was charged.

2.83. The Committee pointed out that the amended definition of Patent & Proprietary Medicines had legal implications and asked why the Ministry of Finance, before issuing the instructions in April, 1962, did not consult the Ministry of Law. The representative of the Board stated, "I have no clarification to give."

2.84. As regards the amount of duty collected by the manufacturers from the customers, the Ministry have stated as under:

"The statement in the Audit para that out of the total refund amount of Rs. 1,42,763 an amount of Rs. 48,302 already collected from the customers had not been refunded to them by the manufacturers does not appear to be correct. The correct figures are as under:—

Name of the Collectorate	Amount refunded to the manufacturers by the Deptt.	Net amount collected by manufacturers from customers but not refunded to customers in refunds being granted by the Department to the manufacturers
	Rs.	Rs.
Bombay	35,315	9,139
Baroda	1,04,946	45,800
Hyderabad	2,502	..
TOTAL.	1,42,763	54,939

2.85. As regards the refund of duty to the customers, the Ministry have stated:

"It has been reported by the Collector of Central Excise, Bombay that the Bombay manufacturers have already paid the amount of refund of duty to 384 parties to whom they have issued refund credit notes for the amount of Rs. 6,717.47. For the remaining amount of Rs. 2,421.53

they have stated that they are not in a position to trace out the exact amount of duty payable to various parties."

2.86. The Collector of Central Excise, Baroda had reported that the Baroda manufacturers (total amount involved Rs. 45,800) were contacted to ascertain the position. They have stated in writing to the Collector as under:—

"We have to inform you that our pattern of sale is through our stockists to wholesale dealers, to chemists and as the market is all over India it is not possible to know the details of customers. Moreover, the matter is very old i.e. peratining to 1962. It will not be possible for us refund the amount of duty to the customers."

2.87. During evidence, the Committee enquired whether in the Central Sales Tax Act or Sales Tax Act of any State, there was a provision to the effect that if there was an excess collection of sales tax which could not be refunded to consumers, such excess collection would form part of the State revenues. They also desired to know the views of Government on the advisibility of incorporating such a provision in the Central Excise Act.

2.28 In their reply, the Ministry have stated

"The matter is being examined in consultation with the Ministry of Law."

2.89. The Committee regret that before taking a decision to tax the pre-budget stock of patent and proprietary medicines in 1962. Government failed to obtain legal opinion. When one of the manufacturers represented against the levy of excise duty, legal opinion was taken by Government and the opinion was that the pre-budget stocks could not be taxed. The Committee hope that Government will ensure that prior legal opinion is obtained in cases of this nature before decisions are taken.

2.90. The Committee also note that out of the amount of Rs. 54,939 collected by the manufacturers from customers in the form of excise duty, only an amount of Rs. 6,717 had so far been refunded to the customers, leaving a balance of Rs. 48,221. The manufacturers had stated that it may not be possible to locate the customers to whom the balance of refund is due. It appears inequitable that while the burden of excise duty should have been borne by customers, the benefit of refund should accrue to manufacturers.

2.91. The Committee would like to stress that every effort should be made by Government to assess excise duty as accurately as possible *ab initio*. The incidence of the duty ultimately devolves on the consumer and it may not be always possible to locate the consumer, if, following an over-assessment, Government decide to refund the amounts recovered in excess. In such cases third party gets a fortuitous benefit out of the refunds made.

2.92. The Committee note that the Ministry of Finance are at present examining, in consultation with the Ministry of Law, the question whether excess collection of this nature should not more appropriately form part of the Government revenues. The Committee would like to be apprised of the results of the examination. If it is legally permissible to retain such excess collections, Government could with advantage consider making the funds available in this regard to a Government research organisation working for the benefit of Industry and the public.

Incorrect refund of duty

Audit Paragraph

2.93. A factory manufacturing nitrocellulose lacquer was getting a set-off for the countervailing import duty levied on the imported ingredients of the product, at the time of levy of the central excise duty on the lacquer.

2.94. In April, 1966, the possibility of set-off being allowed in cases where the countervailing import duty had been refunded was pointed out. Enquiries made by the department showed that the countervailing duty amounting to Rs. 26,407 had in fact been refunded by the customs authorities. The credit of Rs. 26,407 allowed by the Central Excise department thus became inadmissible and was realised in September, 1966. A further sum of Rs. 13,205, similarly incorrectly allowed, is awaiting realisation. Lack of coordination between the Central Excise and Customs wings of the collectorate has led to the erroneous set-off. There are no departmental instructions in force making it obligatory on the part of the Customs branch to make a reference to Central Excise branch before granting a refund of countervailing duty collected by the Customs department.

2.95. The Ministry have stated that the question of having effective coordination between Customs and Central Excise wings of the collectorate is being examined.

[Paragraph No. 28(i), Audit Report (Civil) on Revenue Receipts, 1968]

2.96. The Committee pointed out that there was a double refund of duty in this case, once by the Custom Department and once by the Excise Department. They enquired what steps had been taken to bring about coordination between the two Departments to avoid recurrence of cases of this nature. The Committee were informed that instructions had been issued to avoid double refunds. The procedure for grant of refunds was also being systematised. A copy of the instructions dated 16th November, 1968 issued by the Central Board of Excise and Customs has also since been furnished to the Committee. Extracts therefrom are reproduced below:

"The Board has prescribed the following procedure for coordinating grant of proforma credit under rule 56-A and refund of countervailing duty of Customs which may be noted for future guidance:

(i) While presenting the Bill of Entry for clearance of any goods chargeable to C.V. duty for which he intends to avail of proforma credit under rule 56A, the importer should subscribe to a declaration on all copies of the Bill of Entry that he intends to avail of proforma credit under rule 56A of the Central Excise Rules, 1944 in respect of the goods covered by the Bill of Entry. He should also state the name and address of the factory and address of the jurisdictional Superintendent of Central Excise incharge. The importers' declaration will be confirmed by the Custom House by pin-pointing type-writer on all copies of the Bill of Entry including the triplicate copy of the importer.

(ii) Where the importer has given a positive declaration, the concerned Central Excise Officer may grant proforma credit on the strength of the Bill of Entry without any reference to the Custom House. The Customs House will not grant refund of C.V. duty on such Bill of Entry unless the importer produces a confirmation from the Superintendent of Central Excise concerned that proforma credit has not been debited to the extent of refundable amount.

(iii) If the importer has given no such declaration, the Central Excise Officer will not grant proforma credit unless he has informed the Customs House and has verified from the Customs House that no refund has been granted in respect of the C.V. Duty. On receipt of such an intimation the Customs House will keep a suitable note on its copy of the Bill of Entry and will not sanction any refund of the C.V. duty in future unless the importer produces a

confirmation from the Superintendent of Central Excise that proforma credit account of the manufacturer has been debited to the extent of refundable amount. If a refund has already been sanctioned by the Customs House before the receipt of the letter from the Central Excise Officer, the Customs House will send him the particulars of refund and the Central Excise Officer will then allow proforma credit of the net amount only after deducting the amount refunded.

(iv) In cases where no such declaration appears on the Bill of Entry, the Customs House will sanction refund of C.V. duty if due without making any enquiry about the proforma credit so long as it has not received any enquiry from the Central Excise Officer about the particular Bill of Entry."

2.97. The Committee enquired whether a review of the position had been undertaken in other Collectorates. They have been informed that "instructions have been issued to the Central Excise and Customs Collectors to review the position in respect of their charge with a view to ascertain if there has been any such instances of double refunds. Reports on the results of the review are awaited from some of the Collectors."

2.98. The Committee note that, due to lack of coordination between the Excise and Customs Wings, set-off for countervailing duty levied on an imported ingredient of a product was allowed in one case while assessing excise duty, even though the duty had been refunded by the Customs authorities. The Committee observe that the procedure for grant of refunds has since been reorganised to avoid the possibility of such double refunds and that the Collectors of Central Excise and Customs have been asked to review the position to ascertain whether there have been other instances of such double refunds. The Committee would like to be apprised of the results of this review.

Loss of Revenue due to fixation of lower rate of duty

Audit Paragraph

2.99. Polyster polymer chips were assessable to central excise duty at twenty percent *ad valorem* up to 26th May, 1967, and thereafter at thirty per cent *ad valorem*. Although the assessment of this commodity was on the basis of value, the Government of India by notification fixed a specific rate of Rs. 1.50 per kg. On an examination of this rate, however, it transpired that the rate was arrived at on the basis of the cost data furnished by the only manufacturer.

While fixing the rate the element of profit required to be added to the cost price, as per the instructions of the Central Board of Revenue issued in September, 1963, was not included. The prevailing margin of profit, adopted by the Assistant Collector of Central Excise for similar types of assessments in the same collectorate was ten per cent. If this were added to the cost price and the rate of duty fixed, the rate would have been Rs. 1.65 per kg. Failure to take into account the element of profit, resulted in loss of revenue to the extent of Rs. 8,64.273 (including special excise) on the clearance of 48,01,515 kgs. of this product during the period from the 1st June, 1965, to the 25th May, 1967.

[Paragraph No. 28(ii), Audit Report (Civil) on Revenue Receipts, 1968.]

2.100. The Committee referred to the instructions issued by the Board in September, 1963, according to which a suitable addition for margin of profit was to be made for arriving at the assessable value. They enquired why this principle was not followed in this case. The representative of the Board stated that the instructions of September, 1963 were general instructions as to how the assessable value was to be calculated. The present case was that of exemption from duty. He referred in this connection to the relevant notification (dated 1st June, 1965, issued by Government under Rule 8(1) of the Central Excises and Salt Rules), which laid down that polyester polymer chips would be exempt "from so much of the duty of excise leviable thereon as was in excess of Rs. 1.50 per kg."

2.101. The Committee desired to know whether Government could, in exercise of their powers, convert an *ad valorem* rate of duty fixed by Parliament by statute into a specific rate of duty. The representative of the Board stated that the matter was being referred to the Attorney-General for opinion. He stated in this regard that the relevant papers had been sent for vetting to the Comptroller & Auditor General of India, alongwith the opinion of the Ministry of Law.

2.102. In a written reply, the Ministry have stated:

"It is understood that the matter has not yet been referred for opinion to the Attorney General by the Ministry of Law."

2.103. During evidence, the Committee enquired why the specific rate of duty (Rs. 1.50 per kg.) was not enhanced when the *ad*

ad valorem rate was increased from 20 to 30 per cent on 26th May, 1967. The representative of the Board stated: "When we raised the *ad valorem* duty from 20 to 30 per cent, a deliberate (policy) decision was taken, which has been mentioned in the Explanatory Memorandum presented to Parliament, that the existing concessional rates of duty on synthetic resins, plastic materials which go into the manufacture of certain other excisable goods such as paints and varnishes, artificial and synthetic yarns remain unchanged." He further stated that the rates of duty on the fibre and yarn manufactured out of this raw material were steeply rising.

2.104. The Committee desired to know whether a fresh notification would not be necessary to maintain a specific duty at the same level in case an *ad valorem* duty, with reference to which the specific duty was fixed, was raised to a higher level. The representative of the Board stated that according to their view, "The exemption notification issued earlier does not become nullified by the increase in the *ad valorem* rate of duty later." During further discussions, the Finance Secretary agreed to take legal opinion on the question. In their written reply, the Ministry have stated:

"The matter has been referred to the Ministry of Law and their opinion is awaited."

2.105. The Committee desired to be furnished with information on the following points:

(a) the basis on which the rate of duty (Rs. 1.50 per kg.) was fixed in this case.

(b) the C.I.F. value per unit of imported polyester polymer chips, and the amounts of import and countervailing duties thereon; the cost of production per unit in India and the price in the nearest market.

2.106. The Ministry have furnished the following information on the above points:

"(a) Based on the estimated cost of production of Rs. 7.58 per kg. of the resin the incidence of excise duty (basic) at 20% *ad valorem* works out to Rs. 1.516 per kg. The exemption in respect of basic duty was, therefore, given in respect of the amount which was in excess of Rs. 1.50 per kg.

(b) The position prevailing during the quarter ending June 1968 is reported to be as follows:—

C.I.F. Value of imported polyster polymer chips	—	Between Rs. 9.40 and Rs. 11·50 per Kg.
Amount of import duty	—	Varies from Rs .5.60 to Rs. 6·90 per Kg.
Amount of countervailing duty	—	Rs 1.80 (including special excise duty) per Kg.
Cost of production in India.	—	Rs. 8·45 per Kg.

2.107. It has been reported that there is no wholesale or retail market for polyester polymer chips in Bombay as the manufacturer concerned consumes the entire production of the chips internally."

2.108. The Committee note that in exercise of their executive powers, Government changed an ad valorem duty fixed by Parliament into a specific duty. Subsequently when the rate of ad valorem duty was enhanced by Parliament (from 20 per cent to 30 per cent), the specific rate of duty earlier fixed by Government remained unchanged. During the course of evidence the Committee were informed that the question whether Government had necessary powers to convert an ad valorem duty fixed under statute into a specific duty by notification was being referred to the Attorney General for opinion. As an important question of principle is involved, the Committee would like to be apprised of the opinion of the Attorney General on this issue.

2.109. During the course of evidence, the Finance Secretary also agreed to take legal opinion on the question whether a fresh notification would be necessary to maintain a specific duty at the same level in case an ad valorem duty, with reference to which the specific duty was fixed, is enhanced. The Committee have been informed that the matter has been referred to the Ministry of Law for opinion. The Committee would like to await the opinion of the Ministry of Law in the matter.

Loss of revenue due to operation of time-bar

Audit Paragraph

2.110. Prior to 1st March, 1961, both printing and writing paper as well as packing and wrapping paper were subject to the same

rate of duty, although they were categorised as separate sub-items of central Excise tariff. The excise duty on packing and wrapping paper was, however, enhanced from 1st March, 1961. Though poster paper was required to be assessed as packing and wrapping paper, the requirement was lost sight of in one of the collectorates of Central Excise, with the result that poster paper was allowed to be cleared as printing and writing paper at a lower tariff rate. In August, 1961, the mistake was detected by then there was a loss of revenue to the extent of Rs. 2,41,939, as assessments upto the end of May, 1961, could not be revised due to the operation of statutory time-bar for reopening such assessments.

[Paragraph No. 29, Audit Report (Civil) on Revenue Receipts, 1968.]

2.111. During evidence, the Committee enquired whether any special instructions were issued by the Board to Collectorates when the rate of duty on packing and wrapping paper was enhanced in the Budget of March, 1961. The representative of the Board stated that no special instructions were issued in this case. Explaining why this was not done, he stated that whenever changes or revisions in the rates of duty were made, these were clearly indicated in the Budget instruction. Besides, the position in this case was well known. As early as in May, 1967, the Board had issued instructions that poster paper was to be classified as packing and wrapping paper.

2.112. The Committee desired to know why the mistake occurred. The representative of the Board stated that when the samples of these papers were presented to the Assistant Collector concerned, he classified one on the samples as printing and writing paper. This he did sometime in 1958. By the time action could be inflicted against him, he had retired (1960).

2.113. The committee enquired whether the existing system did not make it possible to rule out errors such as categorisation of items was concerned. The representative of the Board stated, "It is not a mistake. Poster paper was deliberately classified as packing and wrapping paper." The Committee stated, "So there is blatant and patent negligence on the part of those people." The representative of the Board state: "That I have already admitted." In reply to a question he stated that they had called for the explanations of the officers concerned in March, 1968, after Audit had brought the matter to their notice.

2.114. The Committee asked for particulars about the date on which the mistake came to notice, the date on which the disciplinary

proceedings were initiated, the date on which the disciplinary proceedings were finalised, and the reasons for which the disciplinary proceedings were not initiated earlier.

2.115. In a note, the Ministry have stated:

"The mistake was noticed by the Department on receipt of a letter dated 27th July, 1961, from the Chemical Examiner. It has been reported that disciplinary proceedings have not yet been initiated as difficulty is being experienced in fixing responsibility due to a number of officers being involved and non-availability of relevant records. A special investigation has been caused to be made by the Board into the disciplinary aspect of this case through the Directorate of Inspection (Customs and Central Excise). In the light of the investigation the Collector of Central Excise, Patna, has been directed to ensure finalisation of the disciplinary proceedings on proper lines expeditiously and effectively."

2.116. During the course of evidence, the Finance Secretary stated: "On the disciplinary aspect, I cannot help conceding that action is started somewhat tardily. The processing of the disciplinary proceedings also seems to take an inordinate amount of time. This will have to be gone into as to how soon we will be able to make an improvement in this respect."

2.117. In reply to a question whether similar omissions had been noticed in other Collectorates, it was stated: "Similar omissions were noticed in six other Collectorates (Bangalore/Baroda/Calcutta & Orissa/Cochin/Nagpur/Poona). The total amount on duty involved in respect of these Collectorates has been reported to be Rs. 3,44,535.33 out of which an amount of Rs. 50,062.46 is stated to have been recovered. It has been reported that three Inspectors of Central Excise were censured, one Superintendent of Central Excise was cautioned and action against another Superintendent is in progress."

2.118. The representative of the Board informed the Committee that in one case, action was taken immediately after the mistake was detected. In other cases, it was initiated after Audit had brought the matter to Ministry's notice. The Committee pointed out to the representative of the Board: "When action is taken only after it is pointed out by Audit, it reflects on the efficiency of your Department." The representative of the Board stated: "Yes; I cannot deny that."

2.119. The Committee desired to know how the Board ensured that instructions issued by them from time to time were duly complied with by lower formation. In a note the Ministry have stated: "The Directorate of Inspection (Customs and Central Excise) through their Regional Organisations and otherwise, and the supervising officers at different levels who visit the field formations, ensure observance of the instructions issued by the Board by the lower formations." The Committee enquired whether the checks exercised by the Directorate of Inspection were adequate. The Finance Secretary stated, "They have got heaps of duties. There are any number of jobs to be attended to and it is not possible, it is not practicable, for one Directorate of Inspection to be able to effectively check the practices in respect of every variety of a commodity..... It will be appreciated that after all some checks are being applied."

2.120. In reply to a question regarding strengthening of Internal Audit, he stated, "That is also engaging our attention. We have not been able to make adequate progress with it because in the meantime, a radical change in the procedure has been introduced. One will have to see over a few months as to what kind of problem this change in procedure throws up. It is admitted that both the quality and scope of work of Internal Audit would need going into."

2.121. The Committee are disturbed over the lapses revealed in this case. In terms of standing instructions issued by the Board in May, 1957, poster paper was to be classified as 'packing and wrapping paper'. This was, however, wrongly classified in seven Collectorates as 'printing and writing paper' causing an underassessment of Rs. 5.86 lakhs. By the time the mistake was detected, the demand could not be raised in most of the cases because of limitation and only a sum of Rs. 50,062 could be recovered. The representative of the Board himself admitted during evidence that this was a case of 'patent negligence' on the part of the officials concerned.

2.122. The Committee are not happy that disciplinary proceedings against the officials responsible for the loss have been so inordinately delayed. In the Patna Collectorate, where the loss of revenue amounted to Rs. 2.42 lakhs, the omission came to light as early as August, 1961, but disciplinary proceedings are yet to be initiated. The Committee need hardly point out that such delays defeat the very purpose of disciplinary proceedings. The Committee desire that the Board should take serious note of such delays and ensure that disciplinary proceedings are initiated immediately the omissions come to light.

2.123. Another disquieting feature of the case is that most of the omissions in classification came to notice only after Audit pointed them out. This indicates that the internal checks exercised in the Central Excise Department are not very effective. The Committee have repeatedly drawn attention to the inadequacy of the Internal Audit Organisation in the Central Excise Department. In paras 3.27-3.28 of their 24th Report (Fourth Lok Sabha), the Committee (1967-68) desired that Government should take an early decision on the question of setting up an independent Directorate of Internal Audit which would be common to all Revenue Departments or alternatively a separate Directorate of Internal Audit for Central Excise. The Committee would like early action to be taken on this suggestion.

Under-assessment due to application of incorrect rates.

Audit Paragraph

2.124. Under a notification issued by the Government of India in March, 1964, as amended from time to time, cotton yarn is assessable at concessional rates of duty prescribed therein. The concessional levy is not applicable to any yarn which is used for weaving in a composite mill.

2.125. The proprietors of a composite mill manufacturing cotton fabrics did not pay the differential duty between the duty at concessional rates already levied and the full tariff rate in respect of the yarn purchased by them. This resulted in under-assessment of duty to the extent of Rs. 85,874 for the period from March, 1964, to November, 1965. The department have since raised a demand for this amount.

[Paragraph No. 30(ii), Audit Report (Civil) on Revenue Receipts, 1968.]

2.126. The Committee enquired how concessional rates of duty were charged in this case, when the relevant notification stipulated that composite mills would not qualify for these rates. In a note it has been stated: "The Mill referred to in para 30(ii) of Audit Report (Civil) on Revenue Receipts, 1968, is a powerloom unit. Since the owners of this Mill were found to own a spinning unit as well, a doubt arose whether such a mill was eligible to avail of the benefit of the compounded levy scheme for payment of cotton fabrics duty on loomage basis. This question was examined in consultation with the Ministry of Law and it was held that a mill of the above type did not cease to be a powerloom unit for the purpose

of the compounded levy scheme referred to above and was not to be treated for this purpose as a composite mill."

2.127. The fact that a mill of the above type did not become a composite mill for the purpose of the cotton fabrics duty misled the local Central Excise Officers to take the view that for purposes of cotton yarn duty also such a mill did not become a composite mill. In reply to a question whether the position had been reviewed in other Collectorates also, the Committee have been informed as follows:

> "The position has been ascertained from all Collectors of Central Excise. According to the reports received from them, there are 8 such units in Central Excise Collectorate, Madras, 1 unit in Poona Collectorate, and 3 units in Bombay Collectorate. Action is reported to have been taken to demand the due amount of duty from all these units, the total amount of duty thus demanded being Rs. 3.97 lakhs out of which it has been possible to realise a sum of Rs. 38,500. The balance of the amount is pending realisation for the reason that either the demand is under dispute or the matter has been taken to the Court of Law."

2.128. The Committee regret that due to a failure to interpret the provisions of a certain notification regarding the levy of concessional rates of duty on yarn, the benefit of these rates was wrongly extended to a number of units resulting in short levy of duty to the tune of 3.97 lakhs. The Committee note that demands for this amount have been raised, but that recovery so far effected amounts only to Rs. 38,500, the balance being under dispute in some cases in the courts. The Committee would like to be apprised of the progress in realisation. The Committee would also like Government to examine how these omissions occurred in the Collectorates and initiate action in the light of their findings.

Inadmissible concessional rates of duty on fabrics diverted to industrial use.

Audit Paragraph

2.129. By a notification issued in February, 1965, the Government of India granted a 50 per cent reduction in basic excise duty payable on medium and coarse varieties of certain categories of fabrics, answering the description of controlled cloth as defined by the Textile Commissioner.

2.130. The Government issued instructions on 27th February, 1965, for the guidance of central excise officers to ensure that all fabrics presented for assessment at concessional rate, bore the markings and price stamping, as required under the relevant notification issued by the Textile Commissioner. According to the instructions issued by the Textile Commissioner on the same date, controlled categories of cloth which are being further processed for any industrial purpose are not to be price-stamped. In terms of the clarification of the Government of India, such fabrics diverted to industrial establishments for production of industrial goods, are not eligible for concessional assessment as they do not require price stamping. It was noticed that in several collectorates, fabrics diverted to use in industrial establishments for production of industrial goods have been assessed at concessional rates of duty. The under-assessment involved on this account in three collectorates amounts to Rs. 64,551 for the period from March, 1965, to August, 1967.

[Paragraph No. 31, Audit Report (Civil), on Revenue Receipts, 1968.]

2.131. The Committee desired to have a Collectorate-wise break-up of under-assessments and realisations. In a note furnished to the Committee, the Ministry have stated:

"The amount of under-assessment of Rs. 64,551/- mentioned in the Audit Report para is composed of—

Cochin Collectorate	..	Rs. 9,762
Hyderabad Collectorate	..	Rs. 14,238
Nagpur Collectorate	..	Rs. 40,551
		Rs. 64,551

"In addition to the above, a sum of Rs. 33,646/- has also been intimated by the Comptroller and Auditor General in respect of Bombay Collectorate making the total amount as Rs. 98,197."

"So far as Cochin Collectorate is concerned the fabrics in question are reported not to have been marked "for industrial use only—not for sale" at the time of their clearance and therefore grant of concessional rates of duty prescribed for controlled varieties of fabrics was not irregular. Even though, therefore, in deference to the audit point of view, a demand has been raised against the manufacturer concerned, yet it has not so far been enforced."

"So far as Hyderabad Collectorate is concerned the circumstances of the case are reported by the Collector to be similar to that in Cochin Collectorate. The manufacturer in this case came up in appeal against the demand of duty, which has however been rejected by the Collector."

"So far as Nagpur Collectorate is concerned, the fabrics were marked "for industrial use only—not for sale" and even then allowed the concessional rates of duty. This was irregular and out of a demand of Rs. 40,551/- against the manufacturer concerned a sum of Rs. 24,500/- has already been realised. The balance of the amount is also expected to be realised in due course."

"So far as Bombay Collectorate is concerned it has been reported that a sum of Rs. 25,754.22 has been realised. Regarding the remaining amount of Rs. 7,851.78 the position is—

(1) a sum of Rs. 1,764.48 pertains to controlled varieties of cotton fabrics which at the time of clearance from a mill in Poona Collectorate were not marked for industrial use only—not for sale', and that being so no demand for duty was raised by the Collector.

(2) A sum of Rs. 6,087.30 pertains to cotton fabrics cleared from a mill in Bombay Collectorate and used for industrial purpose in Poona Collectorate. No demand of duty has been raised in this case also, as the fabrics were not marked 'for industrial use only—not for sale' at the time of clearance".

2.132. During evidence it was stated that the object underlying the notification of February, 1965, was to give a concession only in respect of medium and coarse varieties of cloth which were used by the common man. It was not the intention of Government that the cloth used in the manufacture of rubberised or plasticised industrial products should get this concession.

2.133. The representative of the Board stated that in terms of the instructions issued by the Textile Commissioner such of the controlled fabrics as were to be diverted to industrial use, were to bear the marking "For industrial use—Not for sale". In one case which took place in the Nagpur Collectorate, such cloth escaped assessment. The Inspector concerned referred the matter to the Textile Commissioner who advised that such cloth was liable to

duty. The Inspector, thereafter, raised the demand. In other cases, there was a misuse of controlled fabrics. The controlled fabrics had been duly stamped, in accordance with the instructions of the Textile Commissioner and were, therefore, allowed clearance at the concessional rate. Subsequently, however, these were diverted to industrial uses. This was contrary to the intention of the Textile Commissioner. As soon as the cases came to notice, demands were raised. In some cases, these had been realised also.

2.134. The Committee referred to a Memorandum sent by the Ministry to Audit wherein they had stated:

> ".....Where, however, such marking is not there, there is nothing in the said Notification to deny the grant of concessional rate of duty prescribed thereunder in respect of cotton fabrics otherwise eligible therefor."

2.135. The Committee desired to know what checks were exercised to ensure that such cloth was not diverted to industrial uses. The Finance Secretary stated, "The administration of the scheme is in charge of the Textile Commissioner and the Ministry of Commerce." In reply to a question, he added, "one point which occurs to me is whether we could have some statistical checks on the quantity, marked for industrial use from year to year and see whether from some mill there is not excessive release of this. But as to what happens at the consumer's end, is something which can be dealt with only through the supply machinery of each administration."

2.136. The Committee observe that the intention underlying the Government Notification of February, 1965 was to give a concession (50 per cent reduction in basic excise duty) on certain varieties of controlled cloth which were being used by the common man. This concession was, however, abused by diversion of fabrics assessed at concessional rates of duty to industrial uses. In the result, these fabrics escaped duty to the tune of Rs. 98.197. The Committee would like the Ministries of Industrial Development and Internal Trade and Finance to go into the working of the scheme and take steps to ensure that the fabrics assessed to duty at concessional rates are not diverted to industrial use.

2.137. The Committee note that out of the total under-assessment of Rs. 98.197, demands for Rs. 90.245 have been raised. Of this, a sum of Rs. 50.294 has so far been realised. The Committee desire that vigorous efforts should be made to recover the balance.

Concession in duty on the basis of executive instructions

Audit Paragraph

2.138. Rubber product commonly known as "tread rubber" falling under item 16A of the Central Excise tariff is assessable to duty at rates fixed from time to time by notification of Government. Tread rubber manufactured and used in the same factory, for the manufacture of tyres was, however, not being subjected to duty on the basis of executive instructions issued by the Central Board of Revenue in May, 1962. On 1st April, 1967, Government exempted such "tread rubber" from duty by notification. Non-levy of duty on tread rubber used within the factory of production for manufacture of tyres, during the period from May, 1962, to March, 1967, on the basis of executive instructions has resulted in foregoing revenue to the extent of Rs. 3.97 crores in respect of three factories in three collectorates.

[Paragraph No. 35(i), Audit Report (Civil) on Revenue Receipts, 1968.]

2.139 During evidence, the representative of the Board stated, "When the Budget was introduced in Parliament in 1962, the Memorandum explaining the provisions in Finance (No. 2) Bill, 1962 made it clear that only such tread rubber as is used in the resoling-retreading of pneumatic tyres will be charged to duty. When we issued instructions to the staff we again made it clear that the rubber products used in the original manufacture of tyres within the factory itself should not be charged duty."

2.140. The Finance Secretary added "Government have not lost revenue" because "the intention was never to collect revenue" on the tread rubber used in the factory. Referring to issue of executive instructions for exempting "tread rubber" in 1962, he stated, "The form may be questioned" but "the intention was never in doubt". In reply to a question, he added, "We have been trying to regularise all these things by the issue of a notification. These are some things which happened in the past when a certain kind of procedure used to be in force.....The Committee can take us to task if they found us repeating the same thing after being cautioned and not following their recommendations."

2.141. In reply to another question, the representative of the Board stated that the notification of April, 1967 did not give retrospective exemption.

2.142. While the Committee are prepared to recognise that it might not have been Government's intention to levy excise duty

on tread rubber used for the manufacture of tyres, they consider that Government should have made their intention clear in accordance with the prescribed procedure by issuing an exemption notification rather than through executive instructions. The Committee note the assurance given by the Finance Secretary in evidence that all such exemptions are now made by notification and there would be no recurrence of such a lapse. The Committee will watch the strict compliance of these instructions through Audit Reports.

Short-levy on refills

2.143. Glassware is assessable to duty under item 23A of the central excise tariff. The duty is *ad valorem* and is assessed on the value of glassware cleared from the factories. Some factories manufacturing glass-fillers for thermos-bottles, paid duty on the cost of raw fillers on the basis of executive instructions of the Board at the value arrived at prior to silvering or vacuumising. Such raw fillers cannot be regarded as finished fillers. In view of wide variations between the price of raw-fillers and those sold after silvering or vacuumising there is material difference in duty even after making allowance for breakage etc. If the duty were levied at the stage after the raw fillers were silvered and vacuumised there would have been a gain to revenue of Rs. 7,42,382 for the period from March, 1961 to July, 1967 in four collectorates.

[Paragraph No. 35(iv), Audit Report (Civil) on Revenue Receipts, 1968.]

2.144. According to a note furnished by the Ministry "the difference on average between price of raw-fillers and the price of those sold after silvering or vaccumising ranged from Rs. 1.09 to Rs. 8.50 per piece depending upon capacity and specifications."

2.145. During evidence, the Committee enquired whether a raw filler, without being vacuumised and silvered, could be put to any use and was readily available in the market for purchase by the public. The representative of the Board stated, "Raw fillers as such will not be of any use to the public. Raw fillers are being sold to thermos manufacturers who silver them and vaccumise them and use them in the manufacture of thermos."

2.146. The Committee enquired whether raw glass fillers or fillers after silvering and vacuumising (finished fillers) would more appropriately fall under item 23A of the Central Excise Tariff (Glass and Glassware). The representative of the Board stated,

"The stage at which duty should be charged or becomes leviable is a matter on which there is clear judicial pronouncement of the Supreme Court (in the DCM Vs Union of India). According to that, the moment a product, which is known to the market, comes into existence, it becomes taxable. It is open to the assessee to discharge his duty liability at that stage. The refiller is also a marketable product, refiller without mirroring. A marketable product does not necessarily mean that it must have use to the consumer directly. It may have a use at an intermediate stage also. As the tariff item expressly sets out glass shell and it is known to the market, hence it is liable to duty." In reply to another question, he stated, "We feel that only unsilvered and unvacuumised refill would be assessable under this, not after they have been silvered or vacuumised." After a refill has been silvered and vacuumised, it becomes a new commodity, called "refill for thermos glass."

2.147. Drawing the attention of the witness to the Central Excises Act which defined a manufacturing process as inclusive of any process incidental or ancillary to the completion of a manufactured process, the Committee enquired whether the glass refill without silvering and vacuumising could be considered a manufactured product. The Finance Secretary agreed to consult the Directorate General of Technical Development on the question.

2.148. In a note, the Ministry have stated

> "The Directorate General of Technical Development have been consulted in the matter. While they endorse the views of the audit namely, that the glass refill without silvering and vacuumising cannot be regarded as a finished refill, they have also pointed out that a raw-refill before silvering and vacuumising is glassware and has some value to another manufacturer of vacuum flasks, though it is of no value to the ultimate consumer. They have also recommended that the complete refill should be charged to Excise Duty instead of the raw refill."

2.149. The Committee note that, according to the view expressed by the Directorate General of Technical Development, glass-refills, which are not silvered and vacuumised, cannot be regarded as finished refills and that complete refills, rather than raw refills, should be charged to duty. The Committee regret that the Ministry did not consult the Directorate General, Technical Development till the matter was raised by Audit.

2.150. The Committee hope that in the light of the opinion of the Director General, Technical Development, Government will consider whether it would not be advantageous to levy excise duty on silvered and vacuumised refills rather than raw refills.

Arrears of Union Excise duties*.

Audit Paragraph

2.151. The total amount of demands outstanding as on 31st March, 1967 in respect of Union Excise duties was Rs. 1606.68 lakhs as given below:

Commodity	Pending for more than one year	Pending for more than a month but not more than a year	Total
	(in lakhs of rupees)		
Unmanufactured tobacco	296·56	98·16	394·72
Diesel oils N.O.S.	9·73	55·35	65·08
Furnace oil	0·74	35·23	35·97
Artificial and Synthetic Resins and Plastics materials	100·76	24·47	125·23
Paper	19·09	19·05	38·13
Rayon and Synthetic fibres and yarn	100·83	219·89	320·72
Cotton fabrics	193·61	30·64	224·25
Iron or steel products	13·00	26·50	39·50
Refrigerating and Airconditioning appliances and machinery	43·93	21·57	65·05
All other commodities	142·06	155·51	297·51
	920·31	686·37	1606·68

[Paragraph No. 36, Audit Report (Civil) on Revenue Receipts, 1968]

*Figures were furnished by Ministry of Finance.

2.152. The position of arrears of union excise duties as at the end of each of the six years ending March, 1967 was as follows:

(In lakhs of Rupees)

	Amount
31-3-1962	409·64
31-3-1963	565·16
31-3-1964	801·03
31-3-1965	1109·84
31-3-1966	1180·69
31-3-1967	1606·68

2.153. The Committee desired to know the reasons for the heavy increase in the rate of arrears and the measures being taken or proposed to be taken to bring down the arrears. In a note, the Ministry have stated as follows:

"(a) *Main reasons for the heavy increase in the arrears of central excise revenue are as under*:

(1) *Expansion in the coverage of excise duties and growing complexity of the Excise Tariff*.—Coverage of the central excise levies has been expanding. There have been quite a few commodities which are subject to multipoint levies. In order to mitigate the effect of multi-point levies, where merited, and to provide necessary relief to small scale sector and medium scale sector of the industry, various schemes of exemptions, set off, rebates and proforma credits have been devised. The Central Excise Tariff has consequently been growing in complexity. This has increased the assessment disputes, appeals, revision applications and court cases.

(2) *Time-consuming appellate processes*.—It has also been noticed that there is now greater awareness of the rights and remedies by way of appeals etc., available to assessees. The procedure for deciding assessment disputes, appeals and revision applications has become a protracted and time-consuming one because of increasing demand for personal hearing, cross-examination, chemical tests and re-tests, consultation with the experts, market enquiries to ascertain end-use of the product etc. Thus,on the one hand, assessment disputes are on the increase and on the other hand decision on complicated assessment disputes has been taking more time. Principles

of natural justice have to be observed fully by adjudicating appellate and revisionary authorities; otherwise the entire proceedings would be held void.

(3) *Amount locked up in assessment disputes and court cases.*—As a result of these appellate processes, the revenue involved in assessment disputes gets locked up for quite some time till the dispute is finally decided. The Supreme Court has held in 1967 that the substantive right of appeal cannot be fettered by insisting on predeposit of Government dues which are subject-matter of the appeal. An analysis of the arrears pending at the end of March, 1967 has shown about 50% of the arrears were pending on account of assessment disputes, appeals, revision applications and court cases.

(4) *Substantial arrears due from a large number of growers/curers of unmanufactured tobacco.*—There are certain additional factors leading to heavy arrears in the case of unmanufactured tobacco. Tobacco is an agricultural product and there are nearly 7 lakh growers/curers on whom the liability arises.

A large number of them consists of small growers/curers (cultivating less than 10 acres or curing less than 40 quintals of tobacco). Although the revenue collected from unmanufactured tobacco forms about 6% of the total excise revenue, arrears of revenue in the case of un-manufactured tobacco form about 25% of the total central excise arrears as at the end of March, 1967. It is difficult to eliminate these arrears altogether as they arise due to factors over which Government have no control such as bad financial condition of tobacco curers, natural calamities affecting tobacco areas leaving the assessees even more indigent, drought, crop failures, etc. Two successive years of drought (1965 and 1966) had something to do with steep increase in arrears at the end of March, 1967. With a good harvest in 1967-68 the upward growth in the arrears has been arrested and the arrears as at the end of March, 1968 are almost the same as those at the end of March, 1967.

(5) *Tardiness of the State Revenue Authorities.*—After departmental action to realise the arrears fails, a certificate is sent to the District Collector for recovery of the amount as arrears of land revenue. About 8% of the arrears at the end of March, 1967 was under certificate action. The State Revenue Authorities have their own involved procedure for taking the certificate action. A certain amount of tardiness on their part is due to the general poverty of tobacco growers/curers in the villages.

(6) *Arrears on account of glass wool/fibre.*—The matter whether glass wool/fibre was liable to duty as synthetic fibre was under

consideration. It was decided in November, 1965 that it was technically so liable and simultaneously exemption notification No. 176/65-CE was issued on 6th November, 1965 exempting glass wool/fibre from the whole of the duty leviable thereon. Technical liability in respect of the clearances of glass wool/fibre effected prior to 6th November, 1965 remained and demands were raised in respect of such liability. The Government have, however, no intention of enforcing these demands. Since, under the existing Central Excise and Salt Act, 1944, the Central Government is not empowered to grant retrospective exemption from duty, the matter is under consideration, in consultation with the Comptroller and Auditor General of India. The arrears in respect of glass wool/fibre totalling about Rs. 314 lakhs and forming about 20% of the total arrears, are thus more apparent than real but nevertheless they have inflated our arrears figure.

2.154. (b) The following steps have been taken or are proposed to be taken to speed up the liquidation of arrears:

(1) *Close watch on the progress of liquidation of arrears by Government.*—The progress of liquidation of arrears is kept under close watch by the Government. Monthly progress reports are obtained from all Collectors by the Director of Inspection, Customs and Central Excise. He prepares a consolidated all-India review every month and sends it to the Board. Suitable instructions are issued to the Collectors who have not shown satisfactory progress towards liquidation of arrears.

(2) *Instructions to Central Excise Officers for vigorous action.*—Instructions have been issued that the officers should not show any complacency after issuing demands for duty but should vigorously pursue the realisation work by contacting the assessees. Arrear collection squads have been organised in many Collectorates to effectively pursue the realisation of arrears from curers of unmanufactured tobacco.

(3) *Prompt certificate action.*—Officers have been instructed that in case of failure of departmental action, certificate action should be taken without any delay. Collectors and other senior officers have been asked to contact the State Chief Secretary or Revenue Secretary and impress upon them the need for speedy certificate action by the State officials.

(4) *Prompt write off of irrecoverable petty arrears.*—Instructions have been issued that petty arrears upto Rs. 250 which are irrecoverable should be written off by the Assistant Collector of

Central Excise on the authority of certificate of irrecoverability furnished by the Superintendent of Central Excise and without waiting for such certificate from the State Revenue Authorities.

(5) *Provision to have our own Tax Recovery Officers.*—As the State Revenue Authorities have been found to be not very enthusiastic in liquidating arrears of Central Excise, a provision is being made in the Central Excises Bill whereby Central Excise Department would be able to appoint its own Tax Recovery Officers instead of depending entirely upon the State Revenue Authorities.

(6) *Discontinuance of the practice of issuing supplementary demands in respect of pending assessments of unmanufactured tobacco.*—One of the factors responsible for increase in arrears relating to unmanufactured tobacco was the practice of issuing supplementary demands in respect of pending assessments whenever rate of duty on unmanufactured tobacco was increased. This practice has been discontinued by amending the relevant Rule 9A in 1965.

(7) *Determination of initial classification of the goods by a gazetted officer.*—As a part of the self-assessment scheme, which has been extended to all but 14 excisable commodities with effect from 1st June 1968, it has been laid down that the initial tariff classification of a product should be determined by the Superintendent of Central Excise instead of by the Inspector of Central Excise. It is expected that this step would reduce the number of assessment disputes in future.

(8) *Expeditious disposal of appeals and revision applications.*—The Unit dealing with appeals and revision applications in the Board's/Ministry's office has been strengthened. A close watch is also kept on the disposal of appeals by Collectors and Deputy Collectors and monthly progress reports are obtained from the Collectors by the Director of Inspection, Customs and Central Excise who sends an all India review to the Board every month."

2.155. The Committee asked for particulars regarding the amounts of demands recovered *vis-a-vis* amounts outstanding for the years 1965-66, 1966-67 and 1967-68 in respect of (i) unmanufactured tobacco, (ii) artificial synthetic resins and plastics materials, (iii) Rayon and synthetic fabrics and yarn, and (iv) cotton fabrics which accounted for nearly two-thirds of the aggregate arrears. They also desired to know the particulars for the arrears in respect of these commodities and the steps taken or proposed to be taken

to reduce them. The Ministry of Finance have furnished statement which is given below:

Commodity	Arrears of Union Excise duties as on			Amount recovered out of		
	31-3-65	31-3-66	31-3-67	Col. 2 during 65-66	Col. 3 during 66-67	Col. 4 during 67-68
1	2	3	4	5	6	7
				(Rs. in lakhs)		
(a) Unmanufactured Tobacco .	313·00	338·17	394·72	64·38	63·38	76·95
(b) Artificial Synthetic Resins and Plastics Materials	26·09	102·79	125·23	2·37	5·28	28·37
(c) Rayon and Synthetic Fibre and yarn	12·66	119·00	320·72	0·67	0·30	0·40
(d) Cotton Fabrics .	128·52	220·78	224·25	7·06	13·93	23·05

2.156. Giving his views regarding the measures necessary for clearance of arrears, the Finance Secretary stated: 'My own feeling is that what is really needed is a drive to clear up these cases. But it is quite likely that in this drive a lot of these dues may become unsustainable."

2.157. The Committee would like concerted steps to be taken to improve the position in regard to the collection of arrears of Union Excise Duties. The arrears which amounted to Rs. 409·64 lakhs on 31st March, 1962 increased to Rs. 1606·68 lakhs on 31st March, 1967. Viewed in relation to the total realisation from Excise Duties, the arrears amounted to 0·84 per cent of the realisation in 1961-62 and 1·55 per cent in 1966-67.

2.158. The Committee also observe that old arrears (i.e., arrears pending for more than one year) constitute as much as 57 per cent of the aggregate. As in previous years, the largest arrears are in respect of unmanufactured tobacco (about Rs. 3·95 crores) of which over 75 per cent are pending for over one year. The Committee, in their successive Reports on Union Excise Duties, have been stressing the need for the early liquidation of arrears.

2.159. The Committee further note that arrears of excise duty on glass wool/fibre amounted to Rs. 3·14 crores or 20 per cent of the total arrears as at the end of 1966-67. Government have stated that in view of a decision taken to exempt this item from duty, there is no intention of enforcing the outstanding demands. Government is considering the question of withdrawing these demands, in consultation with the Comptroller and Auditor General of India. The Committee would like the matter to be speedily settled.

Excise Duty on Yarn

2.160. The Committee drew the attention of the Department to the fact that a number of spinning mills in the country had been closed down. It had been represented by the industry that this was due to the increasing burden of excise duty on yarn. The Committee enquired whether Government had analysed the reasons for the closure of the spinning mills, with particular reference to the effect of increase in excise duty on yarn and what steps had been taken or were proposed to be taken to improve the situation. The Committee also enquired whether Government had considered the feasibility of levying duty on cloth on *ad valorem* basis instead of levying duty on yarn.

2.161. Information about duties levied from time to time since 1961 on cotton twist yarn and thread is given in Appendix III. The Committee note therefrom that there was a substantial increase in duty w.e.f. 1st March, 1966.

2.162. The figures of production of cotton yarn during the six calender years during 1967, are given below:

Year	Production (in Million Kgs.)
1962	859·6
1963	892·6
1964	964·8
1965	939·2
1966	901·0
1967	896·5

It would be seen that there has been a progressive reduction in production since 1964.

2.163. In regard to the closure of the mill, the following position has been intimated to the Committee:

"....28 spinning mills having installed capacity of 4,14,370 spindles and 11,598 workers on roll were closed by the end of October, 1968. Out of these, 20 mills were in Madras State, 3 in Gujarat and one each in Kerala, Maharashtra, Mysore, West Bengal and Pondicherry. The following table gives the distribution of mills according to the period of closure—

Period of closure	No. of mills
Perior to 1967	3
during 1967	6
during 1968	19"

2.164. As regards the reasons for the closure of the Mills, the Committee have been informed as follows:

"The main reason for the closure of the mills as reported, is financial difficulties faced by them. The cotton textile industry as a whole had been facing difficulties for the last 2 or 3 years. These have been brought about by a variety of factors, such as loss of productive efficiency arising from absolescence of machinery in a large number of units, substantial increase in the debt equity ratio, increase in production cost, recession in demand, and labour trouble. The excise duty burden does not seem to have caused decline in the fortunes of the industry. As a result of the measures already taken by the Government to stimulate the demand, the stocks of yarn with the mills have come down from 28·20 million Kgs. at the end of April, 1968 to 21·15 million Kgs. by the middle of November, 1968, and of the mills in the Southern Region (Andhra Pradesh, Kerala, Madras, Mysore and Pondicherry) from 17·19 million Kgs. to 11·39 Million Kgs."

"The working of a textile mill as judged by the profit making capacity depends on various factors such as cost of raw materials, wages and other element of cost, market demands and also efficiency of the management in purchase and sales as well as availability of necessary working finance. The present condition of the industry is the cumulative result of the operation of these factors and it is difficult to assess the extent of the effect of

increases in excise duty on cotton yarn on the financial working of the spinning mills."

2.165. The following steps are stated to have been taken to remedy the situation:

"With a view to stimulating demand and imparting a healthier tone to the industry as a whole, the following measures have been taken:

(1) decontrol of higher-medium, fine and superfine varieties of cloth;

(2) reduction in the obligation of the mills for production of controlled cloth from 40 per cent to 25 per cent;

(3) 2 per cent increase in ex-mill price of controlled cloth except grey dhoties and sarees counter balanced by downward adjustment of excise duties so that the ultimate price to the consumer was not affected seriously;

(4) suitable adjustments were made in respect of the handloom and powerloom cloth to maintain their competitiveness;

(5) option to the mills to meet their production obligation of controlled cloth by producing higher medium long cloth and shirting or paying compensation to Government at specified rates;

(6) incentives to the mills producing cloth in excess of their obligation of controlled cloth;

(7) higher incentives to mills producing grey dhoties and sarees; and

(8) downward re-adjustments in the rate structure of excise duty on cotton yarn in respect of certain types of yarn and exempting totally hank yarn in plain, straight reels of new French counts less than 34."

2.166. "Apart from the measures mentioned above, following further relief measures to help in the liquidation of stocks of yarn particularly for the mills in the South, have been taken:—

(1) Special rebate of 5 per cent has been sanctioned in addition to the normal rebate of 5 per cent on the sale of handloom cloth by Co-operative societies;

(2) loans of Rs. 50 lakhs and 15 lakhs have been given to Madras and Andhra Pradesh Governments respectively

for re-loaning to the Apex Co-operative Societies to enable the latter to purchase and stock yarn;

(3) it has been decided to stand guarantee for 20 per cent margin money required for operating the scheme for retention of stocks of yarn by the Southern India Millowners' Association and the Tamilnad Millowners' Association, with a view to enabling them to obtain credit from the State Bank of India upto Rs. 5 crores;

(4) special additional assistance of Rs. 2 per 10 lbs. as freight differential has been allowed to stimulate the export of cone/cheese yarn; and

(5) Government are giving to the ICMF grant at a flat rate of 5 per cent of the f.o.b. value of exports with effect from 1st April, 1968 to supplement their export promotion fund.

2.167. Other measures which would enable the industry to secure larger funds for working capital and the modernisation renovation to tide over its present difficulties are also under consideration."

2.168. In regard to the feasibility of levying duty on *ad valorem* basis instead of levying duty on yarn, the Committee have been apprised of the following position:

"Several representations have been received by the Government in which it has been alleged that the existing structure of Central Excise Tariff on cotton fabrics results in un-even burden of duty. Since there is no direct relationship between the rate of duty and the price of cotton fabrics, that is, both the high priced as well as the low-priced fabrics in the same count group are required to bear the same incidence of duty. One of the solutions suggested for such an "irrational" and anomalous" position is that the levy of duty on cotton fabrics be made *ad-valorem*.

"The matter has been examined at considerable length and it has been found that by and large the present structure of the tariff provides a fair and equitable incidence of duty on different categories and varieties of cotton fabrics produced by different sectors. It has also been found that cases where incidence of duty represents pronounced incongruity are an exception rather than the rule. In view of these factors, no change has so far been considered to be necessary. The whole matter is, however, being examined once again in detail."

2.169. The Committee are concerned over the closure of as many as 28 spinning mills in different parts of the country. Yarn production has in consequence been progressively coming down; the production, which was 964·8 million Kgs. in 1964, slumped to 896·5 Million Kgs. in 1967. While the Committee recognize that the closure of mills has been the result of a variety of factors and that it might be difficult to assess the extent to which this situation was caused by the growing burden of the duty on yarn, they do feel that the matter needs serious and immediate attention. The Committee note that Government are at present examining in detail the question whether the existing structure of tariff on cotton fabrics needs any change. The Committee would like to be apprised of the result of the examination and the action taken.

Incorrect assessment at concessional rates

Audit Paragraph

2.170. In one central excise range, wireless receiving sets cleared by six manufacturers from March, 1964, were assessed at concessional rates of duty laid down in a notification of Government issued in that month. According to this notification, the concessional rates are admissible only if the manufacturers exercise their option for the levy of duty at the specific rates permitted therein. But in the six cases referred to above, the manufacturers had not exercised their option to come under the purview of the said notification for purpose of levy of central excise duty. Hence duty on all clearances of wireless receiving sets should have been assessed at the standard rates prescribed in the tariff schedule *viz.*, 20 per cent basic duty plus special duty of 33-1/3% on basic duty. The assessments at the concession rates which were not permissible in the absence of specific option by the manufacturers has resulted in loss of revenue of Rs. 3,31,439 during the period from March, 1964, to September, 1965.

[Paragraph No. 34, Audit Report (Civil) on Revenue Receipts, 1968]

2.171. Wireless receiving sets are assessable to basic excise duty under item 33A of the tariff at 20% *ad valorem* and to special excise duty 33-1/3% of the basic duty. By a notification dated 1st March, 1964, certain specific rates of duty were laid down with reference to the price of the sets at the point of sale to the consumer. A manufacturer became liable to be assessed at these specific rates, if he so elected.

2.172. The Committee enquired how these specific rates of duty could have been applied in the cases mentioned in the Audit paragraph, even when the manufacturers had not exercised the option.

They enquired whether a review of the position in other Collectorates had also been carried out to assess the total amount of loss of revenue. It was stated in reply that "this Ministry do not accept the Audit view that there has been any loss of revenue. The notification in question merely requires that if a manufacturer elects to avail of the exemption, all the wireless receiving sets manufactured by him shall uniformly be assessed to duty at the rates specified in the notification.....It is not necessary that the option to pay duty at the rates specified therein should be exercised in writing. Where the manufacturer makes a declaration of consumer prices and furnishes his list of retain prices for approval, then that should be regarded as an election for assessment at the rates specified in the notification, as otherwise there was no need for him to declare or furnish such list of prices for purposes of assessment of excise duty." As regards the procedure followed in the different Collectorates, the Committee was informed that "the information required has been reported by all the Collectorates except the Collectorates of West Bengal and Calcutta-Orissa."

2.173. The following was the position in regard to assessments made on the basis of oral options or otherwise:

Manner and number of options for assessment at concessional rates of Duty under Notification No. 41/64-CE dated 1-3-1964 or otherwise

Sl. No.	Collectorate	Specific written option or option by virtue of submission of retail price list	Oral option	Basis of Assessment
1	2	3	4	5
1.	Delhi . . .	212	..	Concessional rate of duty
2.	Amritsar Division .	371	112	Do.
3.	Jaipur Division .	Majority	A few	Do.
4.	Kanpur . . .	—	All	Do.
5.	Allahabad . .	..	48	Do.
6.	Patna . . .	..	All	Do.
7.	Shillong . . .	Some in writing and some oral— Total 6	..	Do.

1	2	3	4	5
8.	Siligury Division	All	..	Concessional rates of duty
9.	West Bengal			
10.	Calcutta-Orissa			
11.	Bhubaneshwar Division	6	4	Do
12.	Nagpur	..	54	Do.
13.	Hyderabad	All	..	Do.
14.	Madras	5	46	Do.
15.	Guntur Division	14	1	Do.
16.	Bangalore	28	..	4 manufacturers opted for concessional rates and in the case of 24 others assessments were at tariff rate.
17.	Cochin	..	26	Concessional rates of duty
18.	Poona	31	-	Do.
19.	Bombay	93	25	Do.
20.	Baroda	67	-	Only in 2 cases on tariff rate and rest on concessional rates
21.	Goa	..	1	Concessional rates
22.	Pondicherry	6	..	Do.
	TOTAL	836	331	26 at tariff rate

2.174. The Committee have been given to understand by Audit that on 8th December, 1967 the Board issued instructions to the effect that "assessment of all wireless sets cleared by a manufacturer is to be done either on the basis of specific rates of duty or on *ad valorem* basis uniformly. The option as to the mode of assessment

chosen should be exercised in writing from the manufacturer." The Committee have been further informed by Audit that the legal position in regard to option is "that the exercise of option must be demonstrably plain either by express or implied act involving the uttar improbability the party adopting the other choice open by him."

2.175. The Committee note that specific rates of duty for wireless receiving sets were prescribed by Government under a notification issued in March, 1964. These rates were to apply in lieu of the *ad valorem* rates prescribed in the relevant tariff, if the manufacturer so elected. Government have taken the view that it was not necessary for the manufacturers to exercise this option in writing. The Committee find that the option for purposes of payment of duty on specific rates or *ad valorem* rates was exercised in many collectorates in writing while in others orally. While Government have maintained in a written note to the Committee that "it is not necessary that the option to pay duty at the specified rate mentioned herein should be exercised in writing, they find that in December, 1967 specific instructions were issued by the Central Board of Excise and Customs to the effect that "assessment of all wireless sets cleared by a manufacturer is to be done either on the basis of specific rates of duty or on *ad valorem* basis uniformly. The option as to the mode of assessment chosen should be exercised in writing from the manufacturer."

2.176. The Committee, therefore, feel that there is force in the view-point of Audit and that Government should issue clear instructions so as to avoid recurrence of such instances.

Non-levy of duty on leather cloth.

Audit Paragraph

2.177. In two factories in two collectorates certain types of cloth, known as leather cloth, were being manufactured by coating cotton fabrics with plastics and the resultant products were not assesed to duty, as the cotton fabric content thereof was less than 40 per cent by weight of the resultant products. This was on the basis of the instructions issued by the Central Board of Revenue in February, 1963, and October, 1963 that such goods (having less that 40 per cent by weight of cotton fabrics) would not fall under the category of cotton fabrics but under 'Plastics' and that no duty would be leviable on such goods, if the plastic raw-material and the basic cotton fabrics, used in the manufacture of such leather cloth, were duty-paid. The instructions of the Board are not in keeping with

the language of the tariff item "Cotton Fabrics" if it contained cotton, whatever may be the extent of processing material present. Hence the resultant product referred to above, would be assessable to processing surcharge, under tariff item 19, as "Cotton Fabrics", processed in any other manner. The loss of revenue due to non-levy of processing surcharge was Rs. 7.61.841 from April, 1963 to July,1965.

[Paragraph No. 35(iii), Audit Report (Civil) on Revenue Receipts, 1968]

2.178. The Committee enquired whether the Ministry of Law was consulted by the Central Board of Revenue before instructions were issued in February, 1963 and October, 1963 to the effect that leather cloth would not constitute 'cotton fabrics' if it contained less than 40 per cent by weight of cotton. They were informed that these instructions were shown to the Ministry of Law before being issued. These instructions and "more or less" constituted a "tariff ruling as to what will constitute (cotton) fabric." The Committee pointed out that whereas these instructions had stated that leather cloth would not constitute cotton fabric, Government issued an exemption notification in February, 1968, in respect of leather cloth containing less than 20 per cent by weight of cotton. The Chairman, Central Borad of Excise and Customs stated: "We consulted the Ministry of Law and we were advised that the tariff as it stands at present does not mention any particular percentage of cotton. Even 1% of cotton can come under the tariff. The question arose as to what should be charged. We fixed it (the exemption limit) at about 20% and exempted the ones which are below that." The Committee pointed out that if leather cloth was cotton fabric, then it should have attracted duty under tariff item 19 as 'cotton fabric'. It could not be said that it was Government's intention not to tax leather cloth containing less than 40 per cent of cotton, as in that case the exemption notification should have covered not only leather cloth containing less than 20 per cent of cotton but also that in the 20 per cent 40 per cent range as well. It was, therefore, clear that Government had suffered a loss of revenue in this case. The Finance Secretary stated: "The inconsistancy between the earlier executive instructions and the notification remains to be resolved."

2.179. The Committee regret that, due to a misinterpretation of the relevant tariff item, instructions were given by the Central Board of Revenue in February-October, 1963 that 'leather cloth' need not be assessed to duty as 'cotton fabric' if it contained less than 40 per cent by weight of cotton fabric. It is surprising that the tariff was so interpreted when it had defined cotton fabrics "as all varieties of fabrics manufactured wholly or partly from

cotton," without specifying what the percentage of cotton content should be. When the correct position became known to the Board, they issued an exemption notification in February, 1968, by which time revenue to the tune of Rs. 7.61 lakhs had been lost. The exemption notification covered only leather cloth containing less than 20 per cent cotton. Obviously, therefore, it could not have been Government's intention to exempt leather cloth containing from 20 per cent to 40 per cent cotton. The loss of excise duty in respect of this variety of leather cloth clearly arose out of misinterpretation of the tariff. The Committee hope that such costly mistakes in interpretation will be avoided by both the Board and the Ministry of Law.

III

GENERAL

3.1. It will be seen from the comments in the foregoing paragraphs that, apart from individual lapses and omissions, in a number of cases concessions in duty or exemptions were allowed through executive instructions for the issue of which the statute does not delegate any authority. **The Committee have been critical in their earlier report about the procedure adopted by Government in giving such concessions through executive instructions instead of by a formal notification** [c.f. para 3.16 of the 24th **Report (Fourth Lok Sabha)**]. **The Commitee trust that in future regular legal means will be found to meet such contingencies.**

3.2. A review of the cases pointed out by Audit also reveals that **in a number of cases the notifications have been interpreted diversely by Government and the assessing officers. The Committee had drawn attention to this matter in their earlier reports** [c.f. **Para 3.120 of the Second Report (Fourth Lok Sabha)**]. **The Committee trust that Government will ensure that notifications and orders are so drafted as to preclude more than one interpretation.**

3.3. **The Committee have on a number of occasions been informed that Government propose to introduce a comprehensive Bill in Parliament for amendment of the Central Excise and Salt Act, 1944, to overcome the shortcomings noticed in the working of the Act. The Committee note that the Bill has been under consideration of Government for the past four years. The Committee feel that there should be no further delay in this regard.**

3.4. The Committee have not made any recommendations/observations in regard to certain paragraphs of the Audit Report [e.g. **paras 30(i) and 33**]. **They expect that the Department will nonethe-less, in consultation with Audit and the Ministry of Law, wherever necessary, take necessary remedial action in the light of discussions in the Committee.**

NEW DELHI;
April 17, 1969
Chaitra 27, 1891 *(S)*.

M. R. MASANI,
Chairman.
Public Accounts Committee.

APPENDICES

APPENDIX I

(*Vide* para 2·25 of the Report)

Statement showing month-wise figures of (a) production of manufactured tobacco (b) clearance of flue cured tobacco and (c) clearance of other than flue cured tobacco during 12 months ending Feb'63 and Feb'66 by four cigarette factories mentioned in para No. 23(ii) of Audit Report (Civil) on Revenue Receipts, 1968

A

Name of Month	Production of cigarettes (number)	Clearance of flue cured tobacco (Kgs)	Clearance of non-flue cured tobacco (Kgs)
1	2	3	4
12 months ending February, 1963			
March	60,89,42,800	5,15,055	1,37,577
April	49,29,60,000	4,15,515	97,545
May	42,37,57,000	3,91,000	64,575
June	55,61,99,000	4,88,818	1,03,280
July	50,93,68,000	4,63,928	82,384
August	44,34,15,000	3,98,250	85,114
Sept.	53,04,63,000	4,66,111	85,770
Oct.	47,06,17,000	4,08,043	74,643
Nov.	54,26,11,000	4,98,947	36,447
Dec.	36,99,86,000	5,32,838	98,235
Jan.	49,89,02,000	4,20,724	80,068
Feb.	51,90,74,000	5,29,346	1,02,864
12 months ending February, 1966			
March	65,31,87,810	4,68,367	1,03,245
April	54,60,81,450	4,78,123	1,00,139
May	62,09,17,320	5,21,921	1,15,278
June	62,17,40,070	5,47,861	1,10,203
July	68,02,26,180	5,68,242	1,23,892
August	59,32,27,070	5,08,383	1,09,819
Sep.	64,18,41,970	5,44,639	1,05,770
Oct.	59,14,68,340	5,15,540	1,12,000
Nov.	64,73,86,260	5,61,156	1,15,083
Dec.	67,65,43,020	5,75,249	1,20,578
Jan.	58,61,15,440	4,89,503	1,02,410
Feb.	63,19,83,020	6,24,017	1,23,394

B

Name of Month	Production of cigarettes (numbers)	Clearance of flue cured tobacco Kgs)	Clearance of non-flue cured tobacco (Kgs)
1	2	3	4
12 months ending February, 1963			
March	38,87,78,250	3,05,548	1,17,835
April	36,23,34,750	2,64,750	1,17,573
May	38,73,16,250	3,02,088	1,21,938
June	35,65,75,500	3,18,032	87,356
July	39,80,73,000	2,49,345	1,83,687
August	24,00,33,000	1,84,955	61,313
Sept.	21,38,18,500	1,71,800	27,569
Oct.	24,64,14,000	2,29,091	48,827
Nov.	27,97,90,500	2,53,059	65,134
Dec.	32,20,50,250	2,74,507	77,628
Jan.	40,55,48,500	3,17,361	1,41,981
Feb.	38,48,83,500	5,54,462	1,38,090
12 months ending February, 1966			
March	94,34,35,520	1,96,749	2,31,912
April	71,92,92,560	5,02,518	2,82,004
May	74,94,43,140	5,51,318	2,67,734
June	82,18,59,260	6,13,840	2,77,713
July	87,57,83,330	6,42,558	2,87,560
August	84,47,20,150	6,41,546	3,21,652
Spt.	91,95,82,620	7,35,825	2,74,338
Oct.	85,33,04,300	6,44,098	3,15,632
Nov.	99,83,86,080	6,46,170	4,13,369
Dec.	1,07,28,15,250	7,51,664	3,82,398
Jan.	95,15,43,510	7.39,908	2,89,866
Feb.	1,01,07,43,270	13,96,148	3,46,209

C

12 months ending February, 1963			
March	25,41,97,350	2,17,850	41,275
April	21,91,93,250	2,03,450	31,935
May	19,14,66,750	1,76,750	16,855
June	22,84,69,800	2,20,249	25,051
July	21,66,01,750	1,96,600	18,150
August	21,52,75,750	1,88,380	20,610
September	21,42,27,750	1,88,763	35,829
October	21,36,01,550	1,86,225	20,612
November	25,01,04,400	2,22,950	24,915
December	25,05,85,900	2,41,885	27,445
January	25,39,57,450	2,44,675	26,775
February	23,95,95,000	2,55,130	41,853

1	2	3	4
	12 months ending February, 1966		
March	27,13,58,800	2,25,180	35,462
April	25,90,68,550	2,35,425	38,425
May	25,39,68,550	2,30,025	36,507
June	26,74,41,500	2,11,200	36,422
July	29,02,97,250	2,46,750	39,572
August	26,57,56,350	2,29,730	39,345
September	28,91,10,000	2,69,922	45,967
October	22,53,09,350	2,01,568	35,035
November	29,14,02,800	2,54,590	39,835
December	31,38,30,200	2,76,157	41,515
January	26,32,06,700	2,35,797	32,467
February	27,76,46,750	2,63,885	37,667
	D		
	12 months ending February, 1963		
March	38,47,00,800	1,15,663	3,22,923
April	41,89,67,600	1,47,365	3,20,689
May	40,49,07,800	8,535	3,77,113
June	34,34,91,650	1,04,822	3,01,313
July	34,63,37,500	99,998	2,85,304
August	31,53,92,300	1,27,138	2,41,688
September	35,44,55,550	1,00,728	2,92,883
October	20,30,89,850	38,206	1,78,654
November	36,53,04,550	93,200	3,19,321
December	33,96,06,300	63,912	3,23,553
January	38,96,71,850	80,840	3,51,619
February	33,59,16,000	58,604	3,33,984
	12 months ending February, 1966		
March	41,35,24,750	33,925	3,83,491
April	37,90,76,250	46,385	3,73,729
May	34,55,22,350	42,673	3,44,739
June	33,70,43,400	42,015	3,11,742
July	39,96,68,550	69,048	3,66,716
August	39,72,70,850	53,938	3,82,884
September	41,90,03,850	24,563	4,17,753
October	22,23,55,250	35,000	2,46,965
November	45,08,82,700	1,05,678	3,64,473
December	44 63,85,000	78,092	4,03,258
January	47,70,62,800	77,240	4,43,831
February	50,08,03,500	91,332	4,42,112

Note :—None of the above four factories manufactures Cigars & Bidies. Production figures has therefore been furnished for Cigarettes only.

APPENDIX II

(*Vide* paragraph 2·25 of the Report)

Statement showing the quantity of unmanufactured tobacco cleared for manufacture of cigarettes during February and six months preceding February for the year 1959-60 to 1967-68 separately by four factories referred to in para 23(ii) of audit Report (Civil) on Revenue Receipts, 1968.

(1) A

Year	Quantity cleared (Kgs).						
	August	September	October	November	December	January	February
1	2	3	4	5	6	7	8
1959-60	767215·00	830355·00	740547·50	85355·00	906422·50	934357·50	792119·50
1960-61	507639·31	478931·27	508499·29	544002·87	486572·92	574099·79	528684·80
1961-62	486257·50	453735·00	537997·50	515337·00	608650·00	555002·50	542125·00
1962-63	481784·00	551881·00	482685·50	595394·00	631073·50	500791·50	632210·00
1963-64	462262·00	554001·00	486696·50	588968·00	601666·00	546273·00	700972·00
1964-65	614432·00	532910·00	559171·00	509369·00	599162·00	585848·50	636673·00
1965-66	619100·00	650409·50	627540·00	676239·00	695827·00	591913·00	747411·00
1966-67	787967·50	722777·00	758970·00	732982·00	707220·00	741686·00	665730·00

1967-68	783382·00	664601·00	635781·25	554517·75	644309·00	516326·50	527463.00
(2) A *Monghyr* (*Patna Collectorate*)							
*1959-60	388565	465725	341697	361750	447495	456537	436599
*1960-61	697785	472898	275922	352600	358407	349228	326300
1961-62	429887	413100	304200	441673	399069	425713	398161
1962-63	367766	392321	215951	411000	386393	431018	391523
1963-64	297020	374437	364355	430037	410704	433736	410553
1964-65	345215	441385	317520	414915	477143	430570	432818
1965-66	436180	441631	281650	469353	480486	519520	531745
1966-67	609870	585155	406137	532060	509593	542047	488265
1967-68	531085	484110	375564	416931	452750	480985	544500
(3) *Agarpara* (*Calcutta Collectorate*)							
1959-60	554640	523446	513265	558375	646231	592742	1455080
1960-61	449349	435047	525125	647684	634607	478617	517498
1961-62	432267	360925	293425	459927	493890	475311	347367
1962-63	246268	199869	277918	318193	352135	459342	692552

*Figures have given in lbs.

1	2	3	4	5	6	7	8
1963-64	516338	362188	384764	52448	608924	653755	1230009
1964-65	719989	612288	729195	859894	928167	908185	1462236
1965-66	963166	1010094	959656	1059494	1133973	1029692	1742259
1966-67	810009	666852	874944	898564	702769	568849	818430
1967-68	552870	569040	619819	569715	542018	467373	586955
		(4) *M/s. C BOMBAY*					
1959-60	Not available						
1960-61	194100·22	181834·66	158110·00	190730·00	174540·00	170460·00	171480·00
1961-62	251190·00	219910·75	223641·00	230142·00	234515·00	263984·00	245430·00
1962-63	208990·00	224592·28	206837·50	247865·00	269330·00	271450·00	266983·00
1963-64	187217·50	193261·50	206516·00	238534·00	224446·00	239065·00	210305·00
1964-65	237793·00	257430·00	251718·50	234225·00	291542·50	271385·00	255620·00
1965-66	269075·00	315890·00	236603·00	294425·00	317672·50	268264·00	301552·00
1966-67	282054·50	265950·00	302330·00	283120·00	338307·50	308125·20	261957·00
1967-68	439690·00	141250·00	410442·50	398070·00	376280·00	473390·00	492539·50

APPENDIX III

(*Vide* paragraph 2·161 of the Report)

Effected rates of Duties on cotton twist yarn and thread

I. *From* 1-3-61 *to* 23-4-62

(A) Cotton twist or thread :

(1) of 35 or more counts	15 Paise per Kg.
(2) of less than 35 counts	10 Paise per Kg.

(B) Cotton Yarn :

(i) if cleared out of the factory in the form of hanks :

(1) of count not exceeding 40 . . .	Nil
(2) of count exceeding 40	5 Paise per Kg.

(ii) if cleared out of the factory in any other form :

(1) of 35 or more counts	15 Paise per Kg.
(2) of less than 35 counts	10 Paise per Kg.

(iii) if used by a composite mill opting to work under special procedure—

(1) in making S. Fine fabrics	1·2 paise per square metre of the fabrics produced from such yarn.
(2) In making Fine fabrics	
(3) in making Medium fabrics . . .	
(4) in making Coarse fabrics . . .	

(5) in making felts—

(a) S. Fine & fine	15 paise per Kg.
(b) Medium & Coarse . . .	10 Paise per Kg.

(6) in making rags/chindies . . . Nil.

II. *From* 24-4-62 *to* 28-2-63 :

(a) Cotton twist or thread :

(1) of 35 or more counts	30 Paise per Kg.
(2) of less than 35 counts	15 Paise per Kg.

(b) Cotton Yarn :

(i) if cleared out of the factory single yarn whether grey or bleached and grey multiple fold yarn if cleared out of the factory in the form of hanks	In any other form
1	2
	(Naye Paise per Kg.)
(1) of 48 or more counts	17·0 27
(2) of more than 40 counts but less than 48 counts .	8·0 18
(3) of 35 or more than 40 counts	Nil 18
(4) of 17 or more counts but less than 35 counts .	Nil 1·5
(5) of less than 17 counts	Nil 10·0

Note.—Above rates made inapplicable to yarn used for wearing in a composite mill, with effect from 15-9-1962.

(ii) if used by a composite mill opting to work under special procedure :

(1) in making S.F. fabrics . .	2	paise per sq. metre of the fabric made.
(2) in making F. fabrics . . .	2	paise per sq. metre of the fabric made.
(3) in making M. fabrics . . .	1·8	paise per sq. metre of the fabric made.
(4) in making C. fabrics . . .	1·2	paise per sq. metre of the fabric made.
(5) in making fents of . . .		
(a) Super fine fabrics		27 paise per Kg.
(b) fine fabrics		18 paise per Kg.
(c) medium fabrics		13·5 paise per Kg.
(d) coarse fabrics		10·0 paise per Kg.
(6) in making rags chindies . .		Nil

III. *From* 1-3-63 *to* 29-2-64.

(a) Cotton twist or thread	
(1) of 35 or more counts . .	30 paise per Kg. plus 13% special duty of excise.
(2) of less than 35 counts	15 paise per Kg. plus 20 % as special duty of excise.

(b) Cotton yarn

(i) if cleared out of the factory and not used for weaving in a composite mill.
Same as during the period under II above plus special duty of excise at the rates indicated against (A) above.

(ii) If used by a composite mill opting to work under a special procedure.
Same as during the period under II above plus special duty of excise at the rates indicated against (A) above.

Note : Count of yarn in respect of the period prior to 1-3-64 is in British system. Thereafter the count of yarn is in French system.

IV. *From 1-3-64 to 16-4-64*

(A) Cotton twist or thread—

(1) of counts 29 or more . . . . . R.e. 1/- per Kg. plus 33⅓ % special duty of excise.

(2) of counts less than 29 . . . . . 50 paise per Kg. plus 20 % as special duty of excise.

(B) Cotton yarn—

(i) if cleared out of the factory and not used in a mill for weaving of cotton fabrics.

TABLE

S. No.	Description	Single yarn, whether grey or bleached and grey multiple fold yarn in hanks	All Others
1	2	3	4
		(naye paise per kilogram)	
1.	of 51 or more counts	50	90
2.	of 49 or more counts but less than 51 counts .	25	60
3.	of 29 or more counts but less than 49 counts .	10	45
4.	of 22 or more counts but less than 29 counts	5	35
5.	of 14 or more counts but less than 22 counts	Nil	25
6.	of 6 or more counts but less than 14 counts .	Nil	15
7.	of less than 6 counts	Nil	10

(ii) if used by a composite mill opting to work under special procedure :—

TABLE

S. No.	Description of yarn	Rate
(1)	(2)	(3)
		(nP per sq. metre of the fabric made)
1.	Yarn used in making superfine fabrics . .	7·00
2.	Yarn used in making fine fabrics . . .	6·00
3.	Yarn used in making Medium 'A' fabrics .	5·00
4.	Yarn used in making Medium 'B' fabrics . .	4·00
5.	Yarn used in making Coarse fabrics . .	2·00

(1)	(2)	(3)
		(Paise per Kg.)
6.	Cotton yarn contained in fents of superfine fabrics	60·00
7.	Cotton yarn contained in fents of fine fabrics .	45·00
8.	Cotton yarn contained in fents of medium 'A' and 'B' fabrics	30·00
9.	Cotton yarn contained in fents of coarse fabrics .	15·00
10.	Cotton yarn contained in rags/chindies . .	Nil

Note :—Special duty of excise also leviable on sized yarn at the following rates:

(i) of 29 counts or more 20%

(ii) of less than 29 counts 10%

V. *From* 17-4-64 *to* 28-2-66

(A) Cotton twist, yarn or thread if cleared out of the factory and not used in a mill of weaving of cotton fabrics—

TABLE

S. No.	Description	[Single yarn, whether grey or bleached and grey or multiple fold yarn in hanks	All others
1	2	3	4
		(Naye paise per Kg.)	
1.	of 51 or more counts	50	90
2.	of 40 or more counts but less than 51 counts .	25	60
3.	of 34 or more counts but less than 40 . .	10	45
3A.	of 29 or more counts but less than 34 . .	5	40
4.	of 22 or more counts but less than 29 counts	Nil	30
5.	of 14 or more counts but less than 22 counts	Nil	25
6.	of 6 or more counts but less than 14 counts .	Nil	15
7.	of less than 6 counts	Nil	10

Note :—Special duty of excise is also leviable on sized yarn at the following rates

(i) of 29 counts or more 20%

(ii) of less than 29 counts 10%

(B) Cotton yarn if used by a composite mill opting to work under special procedure—Same as indicated in respect of the period at IV above under heading B(ii).

VI. From 1-3-66 to 31-3-67

(A) Cotton twist yarn or thread if cleared out of the factory and not used in a mill for weaving of cotton fabrics—

TABLE

S. No.	Description	Duty	All others
		Single yarn, whether grey or bleached, and grey multiple fold yarn in hanks.	
1	2	3	4
		(Rs. per kg.)	
1	Cotton twist, yarn or thread of 51 or more counts	0·90	1·25
2	Cotton twist, yarn or thread of 40 or more counts but less than 51 counts	0·65	1·00
3	Cotton twist, yarn or thread of 34 or more counts but less than 40 counts	0·40	0·75
4	Cotton twist, yarn or thread of 29 or more counts but less than 34 counts	0·25 (0·05 w.e.f. 30-4-66)	0·60 (0·50 w.e.f. 30-4-66)
5	Cotton twist, yarn or thread of 22 or more counts but less than 29 counts	0·05 (Nil w.e.f. 30-4-66)	0.40
6	Cotton twist, yarn or thread of 14 or more counts but less than 22 counts	Nil	0.25
7	Cotton twist, yarn or thread of 6 or more counts but less than 14 counts	Nil	0·15
8	Cotton twist, yarn or thread of less than 6 counts	Nil	0.10

(B) if used by a composite mill opting to work under special procedure.

TABLE

Sl. No.	Description of yarn	Rate
1	2	3
		Paise per sq. metre of the fabrics made
1	Yarn used in making superfine fabrics	10·00
2	Yarn used in making fine fabrics	7·50
3	Yarn used in making medium 'A' fabrics	6·00
4	Yarn used in making medium 'B' fabrics	4·00
5	Yarn used in making coarse fabrics	2·00
		(Rupees per kilogram)
6	Yarn contained in fents of superfine fabrics	1·00
7	Yarn contained in fents of fine fabrics	0·75
8	Yarn contained in fents of medium 'A' and 'B' fabrics	0·40
9	Yarn contained in fents of coarse fabrics	0·15
10	Yarn contained in rags chindies	Nil

NOTE:- Special duty of excise is also leviable at the following rates:-

(i) of 29 counts or more 20%

(ii) of less than 29 counts 10%

COTTON YARN

(Tariff Item No. 18A)

During Calendar Year	Production (Mn. kg.)
1962	859·6
1963	892·6
1964	964·8
1965	939·2
1966	901·0
1967	896·5

SOURCE: Indian Textile Bulletin March, 1968 issued by Textile Commissioner, Bombay.

Appendix IV

Summary of conclusions Recommendations

S. No.	Para No.	Ministry Department Concerned	Conclusio, Rec m-mendatio s
1	2	3	4
:	1 9	Finance	The Committee trust that, in the interest of export promotion, Government will give continuous attention to the question of extending the scope of drawbacks. It would also help the cause of export promotion if Government could ensure that the procedures for payments are so streamlined as to make payment of drawback amounts to exporters possible within two weeks of the delivery of export manifests, as suggested by the Drawback Enquiry Committee.
2	1 13	Do.	It is nearly five years since the Public Accounts Committee urged Government to strengthen and improve the working of the Internal Audit Organisation. This has not yet been done. The Committee desire that the reorganisation scheme be finalised and implemented without further delay.
3	1 19	Do.	The Committee note that demands amounting to Rs. 2·12 lakhs raised in six cases towards countervailing duty on components and accessories of an ice-making plant have not yet been recovered. In four other cases, demands could not be raised due to limitation. The Committee note that

1	2	3	4
			the question whether ice-making plant and other refrigerating and air-conditioning machinery & attract countervailing duty is under the consideration of Government. As the matter was raised by Audit in June, 1965, the Committee are not able to appreciate why a decision has not yet been taken in the matter. The Committee need hardly stress that Government should issue necessary instructions in the matter, in consultation with the Ministry of Law and Comptroller and Auditor General wthout further delay.
4	1·2	Finance	The Committee note that the Custom House is being asked by the Board in this case to fix responsibility for the omission to circulate certain instructions issued by the Board in October, 1962. They would like to be informed of the action in the matter. The Committee would also like a fool-proof procedure to be evolved whereby important instructions are brought promptly to the notice of all those entrusted with the duty of appraising goods for customs duty.
5	1·2	Do.	The Committee are distressed at the manner in which the Calcutta Custom House acted in this case. During the period May, 1963 to March, 1966, Audit pointed out no less than 17 times that the practice of non-levy of countervailing duty on spirit and oil soluble coal tar colours was not in conformity with the law. The Custom House, however, persisted in the non-levy of the countervailing duty on the ground that

			this was the 'established practice'. It is unfortunate that this 'established practice' continued till March, 1966 when the Collector decided that it was not in conformity with the law. Revenue to the tune of Rs. 35,000 was in the meanwhile lost.
	1.29	Do.	It is hardly necessary for the Committee to say that every 'established practice', whatever its basis, has to be in conformity with the law, and should cease as soon as it becomes inconsistent with any legal provision. The Committee note that suitable instructions in the matter have been issued by the Ministry of Finance to the Collectors of Customs. They trust that the Board will ensure that these instructions are strictly complied with.
6	1.37	Do.	The Committee regret that due to failure on the part of the Board to endorse copies of certain instructions, cables, wires and other equipment intended for non-telecommunication purposes were wrongly assessed at concessional rates, entailing a loss of revenue to the tune of Rs. 1.43 lakhs. This amount could not be recovered due to limitation. The Committee note that instructions have been issued by the Board to all Branches and Section Officers of the Central Excise Wing to ensure that copies of circulars/notifications having a bearing on the levy of countervailing duty are sent to all Custom Houses. The Committee trust that these instructions will be strictly complied with.
			The Committee note that requests for voluntary payments of the duty have been made by the Custom House in respect of time-barred claims in

1	2	3	4
			this case. They would like to be informed of the outcome of the efforts made by the Custom House in this regard.
7	1·44	Finance	The Committee regret to observe that crawler mounted cranes which, in terms of the Board's ruling of February, 1963, should have been assessed as machinery were wrongly assessed as conveyance. In the result the importer had to pay an extra tax of Rs. 73,905. The error was not rectified even when the matter came up in appeal to the Appellate Collector. It also escaped the notice of the Internal Audit Department who had checked the claim at three stages—the internal assessment, claim rejection stage and the appellate stage. The Committee would like to point out that over-assessments are quite as objectionable as under-assessments. Government should, therefore, take the earliest opportunity to repair such omissions, if necessary, by acting *suo motu* under Section 131 of the Act.
8	1·6·	Do.	The Committee consider it regrettable that some of the seized vehicles should have been garaged with a garage owner without entering into a written agreement for this purpose. When a dispute arose with the garage owner about the rent to be paid for garaging, the garage owner refused to release the cars, two of which had been auctioned in the meanwhile. As a result, the Custom House was not able to hand over possession of those cars to the bidders. When the cars were subsequently sold after the settlement of the dispute, they fetched Rs. 6,800 less.

			The Committee note that instructions have now been issued by the Ministry impressing upon the Custom Houses the need to enter into written agreements for the garaging of vehicles. The Committee trust that these instructions will be strictly complied with.
9	1.69	Do.	The Committee note from the information furnished to them that of 201 cars seized by the various Customs Houses, adjudication proceedings are in progress in respect of 117 cars. The Committee find that adjudication proceedings in respect of 20 cars have been in progress for a year or more. In the case of launches, adjudication proceedings are in progress in respect of 26 out of 55 launches which were seized in different Custom Houses. The Committee would like Government to examine how best the proceedings could be speeded up. The Committee would also like action to be taken expeditiously for the disposal of 14 cars and 6 launches which are awaiting auction. Instructions should also be issued to the Custom Houses to ensure that the auction takes place soon after the confiscation proceedings are completed and the time allowed to parties for initiating legal proceedings expires.
10	1.70	Do.	Another point that the Committee notice is that 43 of these seized cars have been released to parties on bail or execution of a bond. The Committee would also like it to be examined whether other seized vehicles in the custody of Custom Houses could be released to the parties, pending finalisation of legal proceedings, subject of course to Government's interests being adequately protected. This might help to minimise problems now faced by the Customs Houses in the matter of the maintenance and upkeep of such vehicles.

1	2	3	4
11	1.71	Finance	The Committee would like to emphasise the need for the proper upkeep of seized vechiles while in the custody of Custom Houses. Apart from the fact that a properly maintained vechile would fetch a better price, the Committee would like to point out that in some cases seized vehicles may have to be restored to the original owners. In such an eventuality, the Department is under an obligation to return the vehicle to the owner in the same condition in which it was seized, or, in the alternative, pay its value. The Committee note that pursuant to the recommendations of the Public Accounts Committee (1967-68) contained in para 1.45 of their 24th Report (Fourth Lok Sabha), instructions have again been issued by the Ministry to the Custom Houses to make appropriate arrangements for protecting the seized confiscated vehicles from deterioration due to inclemencies of weather. The Committee trust that these instructions will be strictly complied with by the Customs Houses.
12	1.72	Do.	The Committee notice from the information furnished by Government that in some cases seized cars were used for departmental purposes. The Committee consider this procedure to be fraught with risk. Any damage or accident to the car resulting from such use would put Government in an embarrassing position *vis-a-vis* the parties concerned, if, either as a result of adjudication or appeal, the Department is obliged to restore ownership of the car. The Committee would like Government to examine the matter further and issue suitable instructions.

13	1.73	Finance Foreign Trade & Supply	The Committee are disappointed that an undertaking like the State Trading Corporation should have taken eight months to reply to the Department of Revenue's suggestion for the disposal of confiscated cars through their agency. The Committee note the Finance Ministry's view that the Corporation's terms for disposal are onerous and need to be scaled down. The Committee are keen that the matter should be settled at an early date so that confiscated vehicles can be disposed of expeditiously to the best advantage of Government.
14	1.80	Finance	The Committee are glad that the arrears of customs duty have been brought down from Rs. 108·50 lakhs as on 31st October, 1966 to Rs. 71·52 lakhs as on 31st October, 1967. The Committee would, however, like to point out that arrears pending for more than a year accounted for more than 50 per cent of the aggregate arrears as on 31st October, 1967. The Committee desire that vigorous steps should be taken to liquidate these outstandings.
	1.81	Do.	The Committee also note that out of the total outstandings of Rs. 20.53 lakhs in the Collectorate of Central Excise, Delhi, a sum of Rs. 9 lakhs was due from certain Government Departments or public sector undertakings which had cleared their imports under the 'Note-pass' procedure. A part of it has been pending recovery for over five years. The Committee need hardly point out that Government Departments and public sector undertakings clearing their imports under the 'Note-pass' procedure owe a special responsibility for the expeditious settlement of Customs dues. The Committee trust that the Departments and undertakings concerned will clear

1	2	3	4
			the outstandings without further delay. The Committee would like to watch the position through future Audit Reports.
15	2.10	Finance	The Committee note that there were a series of lapses in this case. In terms of a notification dated 1st March, 1959 issued by the Ministry of Finance, specified types of flue cured rawa tobacco qualified for a concessional rate of duty if these were "not actually used" for the manufacture of cigarettes, smoking mixture for pipes and *bidis*. In this case the party concerned had clearly indicated while clearing tobacco from the godown between July and November, 1959 that these were intended to be used in the manufacture of *bidis*, but still these were assessed at the concessional rate, resulting in an under-assessment of Rs. 14,278.67. The mistake came to light in February, 1960 when a sum of Rs. 8,441 could have been recovered had a correct and proper demand been issued. The demand notice was issued after a lapse of 14 days by which time a further amount of Rs. 5,828.40 had become time-barred. Besides, the notice was issued under the wrong rule. Thereafter, a period of over a year and a quarter was taken by the Department to issue the demand notice under the correct rule. But this notice (dated 17th June, 1961) was vitiated because it referred to an earlier notice dated 1st February, 1960, which the High Court deciding the case held to have "clearly never been served" on the firm.
16	2.11	Do.	It has been stated by Government that the notice dated 1st February, 1960 was "actually issued." If this was so, it is not clear why the letter

			was not produced in Court. This aspect needs to be thoroughly gone into by Government. The Committee note that disciplinary proceedings are under way against the officials found at fault in this case. They would like to be apprised of the action ultimately taken.
17	2.18	Do.	The Committee trust that after the proposed Central Excise Bill is enacted, the procedure regarding re-assessment proceedings will be systematised. The Committee would like Government to take early action to see that the Bill is introduced in Parliament. In this connection they would like to invite attention to their observations in para 1.39 of their Thirty-Sixth Report (Fourth Lok Sabha).
18	2.29	Do.	The Committee would like to point out that Rule 224(3) of the Central Excise Rules has an important purpose to serve. It is intended to curb speculative clearances of excisable goods in pre-budget months so that avoidance of possible duty increases may not take place. While the Committee recognise that the powers under the Rule will have to be exercised with circumspection so that smooth movement of vital commodities in the market is not interfered with, they would like to point out that restrictions on speculative clearances to circumvent chances of enhancement of duty will sometimes be necessary. The Committee would like Government in this connection to consider the following suggestions :
			(i) The Rule as it stands now is an "enabling" provision. Government "may" impose restrictions on clearances and if they choose

2	3	4
		to do so, they have to issue a notification in this behalf. As it stood prior to its amendment in 1962, the Rule was a "charging section" in that it became operative "except in special circumstances" when "by general or special order" Government so directed. It might be an advantage to revert to the pre-1962 position in this respect. In that case Government will be specifically called upon on every occasion to take a considered decision whether there are any compelling circumstances to warrant the relaxation of the charging provisions of the Rule which imposed a limitation on clearances in the pre-budget month with reference to the average clearances during the preceding three months.
		(ii) The clearance in pre-budget month now permitted under the Rule is 1½ times the clearance in the preceding twelve months. It requires consideration whether this limit is not unduly high and should not be reduced to 32 per cent as prevailing before the amendment in 1962.
19	2.42	Finance — The Committee are surprised that while issuing the relevant notification there should have been an omission to include Hexane in the list of boiling points spirits entitled to the concession when it was Government's intention to charge Hexane a concessional rate of duty *ab initio*. The Committee note that Government have since issued a notification in

			September, 1966 to extend the concessional rate specifically to Hexane and that Government have also verified that the price at which Hexane was sold earlier to users corresponded to the concessional rate of duty.
	2.43	Do.	The Committee would like to stress the need for the utmost care in the issue of notifications so that they spell out the intention of Government in precise and unequivocal terms, leaving no scope for doubt whatever.
20	2.52	Do.	The Committee observe that the factory in this case was manufacturing and clearing excisable products without a licence for five years from 1959 to 1964, when it did not pay any excise duty. When its failure to take a licence was detected, it was compounded for a sum of Rs. 5. This was done on the consideration that the output of the factory was below the exempted limit. Subsequent investigations have, however, disclosed that the output of the factory was above the exempted limit and that it was liable to pay excise duty. As a result of these investigations, a demand for Rs. 22,762 has now been raised towards duty payable upto end of 1967-68.
	2.53	Do.	It is evident that the figures of output furnished by the factory were accepted by the Central Excise authorities without scrutiny. The Committee would like Government to examine why there was laxity in this regard and what action is called for.
	2.54	Do.	The Committee note that the manufacturer has gone in appeal to the Collector against the demands raised by the Department. They would like to be apprised of the final decision in this regard.

1	2	3	4
21	2.58	Finance	The Committee note that the return regarding raw materials consumed for production during the quarter ending March, 1964 was revised by the factory in this case within four months of the submission of the original return in April, 1964. The revised return showed an increase of nearly 2/5ths in consumption but the Department did not ascertain at that stage whether the original figures of production reported by the factory were correct and whether the factory was liable to pay extra duty. After Audit drew the attention of the Department to this matter in April, 1966, the Department raised a demand for additional duty amounting to Rs. 69,021 in May, 1967, against which the party has gone in appeal. The Committee would like to be apprised of the outcome of the appeal. The Committee would also like Government to investigate whether any steps were taken by the Department when the party reported increased consumption of raw materials in his factory, to verify if there had been a consequential increase in output and liability of the factory to duty.
22	2.68	Do.	The Committee regret that it took Government nearly three years to rectify a defective procedure followed in the assessment of the value of patent and proprietary medicines for the purpose of levy of excise duty. The procedure which was prescribed in a notification issued in May, 1962 provided for the value of the medicines being based on the prices indicated in the manufacturers' price-list. For this purpose the value as shown in the price-lists was to be discounted by a specified percentage, abatement being also given for the element of duty included in the prices. However,

			the discount was applied to prices without deducting the duty element, with the result that the assessable value was depressed and the items were underassessed. Besides causing loss of revenue, this procedure of applying the discount to cum-duty instead of ex-duty prices was also discriminatory, inasmuch as a manufacturer showing his prices exclusive of duty qualified for a lower discount than a manufacturer showing his prices inclusive of duty. Audit had in September, 1963 pointed out to the Department that the procedure of working out discount as cum-duty prices was defective, but it was not till March, 1966 that Government amended the notification suitably. In the meanwhile Government lost revenue to the tune of Rs. 3·03 lakhs in one Central Excise Collectorate alone.
	2.69	Do.	The Committee are not convinced by the reasons given by Government for the delay in amending the notification till 1966. They hope that steps will be taken by Government to ensure that prompt action is initiated on suggestions made by Audit which have substantial revenue implications.
23	2.70	Do.	A more important point arising out of this case relates to the rationalisation of procedure for determining the assessable value of commodities, where such value is worked out backwards from market prices, which include the duty element. It would obviously be necessary to ensure that in such cases the element of discount is applied only after deducting from the market prices the element of duty.
	2.71	Do.	The Committee note that, according to the view expressed by the Ministry of Law, an extension of the principle to other commodities, the value of which is determined under section 4 of the Central Excises and Salt Act, 1944, is not legally feasible.

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23	2.72	Finance	The Committee were informed in evidence that Government proposed to bring forward a comprehensive Bill to amend the existing Central Excise Law "in which provisions relating to valuation were likely to undergo a material change".
	2.73	Do.	The Committee would like the Ministry of Finance to examine, in consultation with the Ministry of Law, whether, at the time of bringing forward the proposed Bill, the relevant section could be so framed as to allow for the extension of the principle to other commodities.
24	2.79	Do.	The Committee regret to observe that as a result of non-observance of the principles laid down in March, 1966, for the assessment of the value of these medicines, Government lost revenue to the tune of Rs. 15,92,699 up to 30th November, 1967 in one Collectorate alone. The short-levy in seven other Collectorates amounted to Rs. 23,013 out of which a sum of Rs. 4,548 had so far been realised. The Committee note that this happened due to what the representative of the Board characterised as "a gross failure of machinery". They also note that the matter is under investigation for fixing responsibility. The Committee would like to be apprised of the outcome of their investigations.
	2.80	Do.	The Committee would also like to be informed of the progress made with the realisation of pending demands in this case in all the Collectorates.

25	2·89	Do.	The Committee regret that before taking a decision to tax the pre-budget stock of patent and proprietary medicines in 1962, Government failed to obtain legal opinion. When one of the manufacturers represented against the levy of excise duty, legal opinion was taken by Government and the opinion was that the pre-budget stocks could not be taxed. The Committee hope that Government will ensure that prior legal opinion is obtained in cases of this nature before decisions are taken.
	2.90	Do.	The Committee also note that out of the amount of Rs. 54,939 collected by the manufacturers from customers in the form of excise duty, only an amount of Rs. 6,717 had so far been refunded to the customers, leaving a balance of Rs. 48,221. The manufacturers had stated that it may not be possible to locate the customers to whom the balance of refund is due. It appears inequitable that while the burden of excise duty should have been borne by customers, the benefit of refund should accrue to manufacturers.
26	2 91	Do.	The Committee would like to stress that every effort should be made by Government to assess excise duty as accurately as possible *ab initio*. The incidence of the duty ultimately devolves on the consumer and it may not be always possible to locate the consumer, if, following an over-assessment, Government decide to refund the amounts recovered in excess. In such cases a third party gets a fortuitous benefit out of the refunds made.
	2·92	Do.	The Committee note that the Ministry of Finance are at present examining, in consultation with the Ministry of Law, the question whether excess collection of this nature should not more appropriately form part

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26	2·92	Finance	of the Government revenues. The Committee would like to be apprised of the results of the examination. If it is legally permissible to retain such excess collections, Government could with advantage consider making the funds available in this regard to a Government research organisation working for the benefit of Industry and the public.
27	2·98	Do.	The Committee note that, due to lack of coordination between the Excise and Customs Wings, set-off for countervailing duty levied on an imported ingredient of a product was allowed in one case while assessing excise duty, even though the duty had been refunded by the Customs authorities. The Committee observe that the procedure for grant of refunds has since been reorganised to avoid the possibility of such double refunds and that the Collectors of Central Excise and Customs have been asked to review the position to ascertain whether there have been other instances of such double refunds. The Committee would like to be apprised of the results of this review.
28	2·108	Do.	The Committee note that in exercise of their executive powers, Government changed an *ad valorem* duty fixed by Parliament into a specific duty. Subsequently when the rate of *ad valorem* duty was enhanced by Parliament (from 20 per cent to 30 per cent), the specific rate of duty earlier fixed by Government remained unchanged. During the course of evidence the Committee were informed that the question whether Government had necessary powers to convert an *ad valorem* duty

			fixed under statute into a specific duty by notification was being referred to the Attorney General for opinion. As an important question of principle is involved, the Committee would like to be apprised of the opinion of the Attorney General on this issue.
	2·109	Do.	During the course of evidence, the Finance Secretary also agreed to take legal opinion on the question whether a fresh notification would be necessary to maintain a specific duty at the same level in case an *ad valorem* duty, with reference to which the specific duty was fixed, is enhanced. The Committee have been informed that the matter has been referred to the Ministry of Law for opinion. The Committee would like to await the opinion of the Ministry of Law in the matter.
29	2·121	Do.	The Committee are disturbed over the lapses revealed in this case. In terms of standing instructions issued by the Board in May, 1957, poster paper was to be classified as 'packing and wrapping paper'. This was, however, wrongly classified in seven Collectorates as 'printing and writing paper' causing an under assessment of Rs. 5.86 lakhs. By the time the mistake was detected, the demand could not be raised in most of the cases because of limitation and only a sum of Rs. 50,062 could be recovered. The representative of the Board himself admitted during evidence that this was a case of 'patent negligence' on the part of the officials concerned.
	2·122	Do.	The Committee are not happy that disciplinary proceedings against the officials responsible for the loss have been so inordinately delayed. In the Patna Collectorate, where the loss of revenue amounted to Rs. 2.42 lakhs, the omission came to light as early as August, 1961, but disciplinary proceedings are yet to be initiated. The Committee need hardly point

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	2·122	Finance	out that such delays defeat the very purpose of disciplinary proceedings. The Committee desire that the Board should take serious note of such delays and ensure that disciplinary proceedings are initiated immediately the omissions come to light.
	2·123	Do.	Another disquieting feature of the case is that most of the omissions in classification came to notice only after Audit pointed them out. This indicates that the internal checks exercised in the Central Excise Department are not very effective. The Committee have repeatedly drawn attention to the inadequacy of the Internal Audit Organisation in the Central Excise Department. In paras 3.27—3.28 of their 24th Report (Fourth Lok Sabha), the Committee (1967-68) desired that Government should take an early decision on the question of setting up an independent Directorate of Internal Audit which would be common to all Revenue Departments or alternatively a separate Directorate of Internal Audit for Central Excise. The Committee would like early action to be taken on this suggestion.
30	2·128	Do.	The Committee regret that due to a failure to interpret the provisions of a certain notification regarding the levy of concessional rates of duty on yarn, the benefit of these rates was wrongly extended to a number of units resulting in short levy of duty to the tune of Rs. 3.97 lakhs. The Committee note that demands for this amount have been raised, but that

			recovery so far effected amounts only to Rs. 38,500, the balance being under dispute in some cases in the courts. The Committee would like to be apprised of the progress in realisation. The Committee would also like Government to examine how these omissions occurred in the Collectorates and initiate action in the light of their findings.
31	2·136	Do.	The Committee observe that the intention underlying the Government Notification of February, 1965 was to give a concession (50 per cent reduction in basic excise duty) on certain varieties of controlled cloth which were being used by the common man. This concession was, however, abused by diversion of fabrics assessed at concessional rates of duty to industrial uses. In the result, these fabrics escaped duty to the tune of Rs. 98,197. The Committee would like the Ministries of Industrial Development, Internal Trade and Company Affairs and Finance to go into the working of the scheme and take steps to ensure that the fabrics assessed to duty at concessional rates are not diverted to industrial use.
32	2·137	Do.	The Committee note that out of the total under-assessment of Rs. 98,197, demands for Rs. 90,245 have been raised. Of this, a sum of Rs. 50,294 has so far been realised. The Committee desire that vigorous efforts should be made to recover the balance.
33	2·142	Do.	While the Committee are prepared to recognise that it might not have been Government's intention to levy excise duty on tread rubber used for the manufacture of tyres, they consider that Government should have made their intention clear in accordance with the prescribed procedure by issuing an exemption notification rather than through executive instruc-

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			tions. The Committee note the assurance given by the Finance Secretary in evidence that all such exemptions are now made by notification and there would be no recurrence of such a lapse. The Committee will watch the strict compliance of these instructions through Audit Reports.
34	2.149	Finance	The Committee note that, according to the view expressed by the Directorate General of Technical Development, glass-refills, which are not silvered and vacuumised, cannot be regarded as finished refiles and that complete refills, rather than raw refills, should be charged to duty. The Committee regret that the Ministry did not consult the Directorate General, Technical Development till the matter was raised by Audit.
	2.150	Do	The Committee hope that in the light of the opinion of the Director General, Technical Development, Government will consider whether it would not be advantageous to levy excise duty on silvered and vacuumised refills rather than raw refills.
35	2.157	Do.	The Committee would like concerted steps to be taken to improve the position in regard to the collection of arrears of Union Excise Duties. The arrears which amounted to Rs. 409.64 lakhs on 31st March, 1962 increased to Rs. 1606.68 lakhs on 31st March, 1967. Viewed in relation to the total realisation from Excise Duties, the arrears amounted to 0.84 per cent. of the realisation in 1961-62 and 1.55 per cent. in 1966-67.

	2.158	Do.	The Committee also observe that old arrears (*i.e.*, arrears pending for more than on year) constitute as much as 57 per cent. of the aggregate. As in previous years, the largest arrears are in respect of unmanufactured tobacco (about Rs. 3.95 crores) of which over 75 per cent. are pending for over one year. The Committee, in their successive Reports on Union Excise Duties, have been stressing the need for the early liquidation of arrears.
	2.159	Do.	The Committee further note arrears of excise duty on glass wool/ fibre amounted to Rs. 3.14 crores or 20 per cent. of the total arrears as at the end of 1966-67. Government have stated that in view of a decision taken to exempt this item from duty, there is no intention of enforcing the outstanding demands. Government is considering the question of withdrawing these demands, in consultation with the Comptroller and Auditor General of India. The Committee would like the matter to be speedily settled.
36	2.169	Finance Ministry of Industrial Development, Internal Trade and Company Affairs	The Committee are concerned over the closure of as many as 28 spinning mills in different parts of the country. Yarn production has in consequence been progressively coming down; the production, which was 964.8 million Kgs. in 1964, slumped to 896.5 Million Kgs. in 1967. While the Committee recognize that the closure of mills has been the result of a variety of factors and that it might be difficult to assess the etxent to which this situation was caused by he growing burden of the duty on yarn, they do feel that the matter needs serious and immediate attention. The Committee note that Government are at present examining in detail

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			the question whether the existing structure of tariff on cotton fabrics needs any change. The Committee would like to be apprised of the result of the examination and the action taken.
37	2.175	Finance	The Committee note that specific rates of duty for wireless receiving sets were prescribed by Government under a notification issued in March, 1964. These rates were to apply in lieu of the *ad valorem* rates prescribed in the relevant tariff, if the manufacturers so elected. Government have taken the view that it was not necessary for the manufacturers to exercise this option in writing. The Committee find that the option for purposes of payment of duty on specific rates or *ad valorem* rates was exercised in many collectorates in writing while in others orally. While Government have maintained in a written note to the Committee that "it is not necessary that the option to pay duty at the specified rate mentioned therein should be exercised in writing," they find that in December, 1967 specific instructions were issued by the Central Board of Excise and Customs to the effect that "assessment of all wireless sets cleared by a manufacturer is to be done either on the basis of specific rates of duty or on *ad valorem* basis uniformly. The option as to the mode of assessment chosen should be exercised in writing from the manufacturer."
	2.176	Do.	The Committee, therefore, feel that there is force in the view-point of Audit and that Government should issue clear instructions so as to avoid recurrence of such instances.

38	2 179	Do.	The Committee regret that, due to a misinterpretation of the relevant tariff item, instructions were given by the Central Board of Revenue in February-October, 1963 that 'leather cloth' need not be assessed to duty as 'cotton fabric' if it contained less than 40 per cent. by weight of cotton fabric. It is surprising that the tariff was so interpreted when it had defined cotton fabrics "as all varieties of fabrics manufactured wholly or partly from cotton," without specifying what the percentage of cotton content should be. When the correct position became known to the Board, they issued an exemption notification in February, 1968, by which time revenue to the tune of Rs. 7.61 lakhs had been lost. The exemption notification covered only leather cloth containing less than 20 per cent. cotton. Obviously, therefore, it could not have been Government's intention to exempt leather containing from 20 per cent. to 40 per cent. cotton. The loss of excise duty in respect of this variety of leather cloth clearly arose out of a misinterpretation of the tariff. The Committee hope that such costly mistakes in interpretation will be avoided by both the Board and the Ministry of Law.
39	3 1	Do	It will be seen from the comments in the foregoing paragraphs that, apart from individual lapses and omissions, in a number of cases concessions in duty or exemptions were allowed through executive instructions for the issue of which the statute does not delegate any authority. The Committee have been critical in their earlier report about the procedure adopted by Government in giving such concessions through executive instructions instead of by a formal notification [c.f. para 3.16 of the 24th Report (Fourth Lok Sabha)]. The Committee trust that in future regular legal means will be found to meet such contingencies.

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40	3·2	Finance	A review of the cases pointed out by Audit also reveals that in a number of cases the notifications have been interpreted diversely by Government and the assessing officers. The Committee had drawn attention to this matter in their earlier reports [c.f. Para 3.120 of the Second Report (Fourth Lok Sabha)]. The Committee trust that Government will ensure that notifications and orders are so drafted as to preclude more than one interpretation.
41	3·3	Do.	The Committee have on a number of occasions been informed that Government propose to introduce a comprehensive Bill in Parliament for amendment of the Central Excise and Salt Act, 1944, to overcome the shortcomings noticed in the working of the Act. The Committee note that the Bill has been under consideration of Government for the past four years. The Committee feel that there should be no further delay in this regard.
42	3·4	Do.	The Committee have not made any recommendations/observations in regard to certain paragraphs of the Audit Report (*e.g.* paras 30(i) and 33). They expect that the Department will none-the-less, in consultation with Audit and the Ministry of Law, wherever necessary, take necessary remedial action in the light of discussions in the Committee.

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26.	Atma Ram & Sons, Kashmere Gate, Delhi-6.	9
27	J. M. Jaina & Brothers, Mori Gate, Delhi.	11
28.	The Central News Agency, 23/90, Connaught Place, New Delhi.	15
29.	The English Book Store, 7-L, Connaught Circus, New Delhi.	20
30.	Lakshmi Book Store, 42, Municipal Market, Janpath, New Delhi.	23
31.	Bahree Brothers, 188, Lajpatrai Market, Delhi-6.	27
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38.	Shri N. Chaoba Singh, News Agent, Ramlal Paul High School Annexe, Imphal.	77
	AGENTS IN FOREIGN COUNTRIES	
39.	The Secretary, Establishment Department, The High Commission of India, 'India House', Aldwych, LONDON W.C.—2.	59

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